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No. 2265

IN THE
United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

*Upon Appeal from the United States District Court
for the Eastern District of Washington,
Northern Division.*

VOLUME II.

Pages ~~419~~ to 883 Inclusive
649

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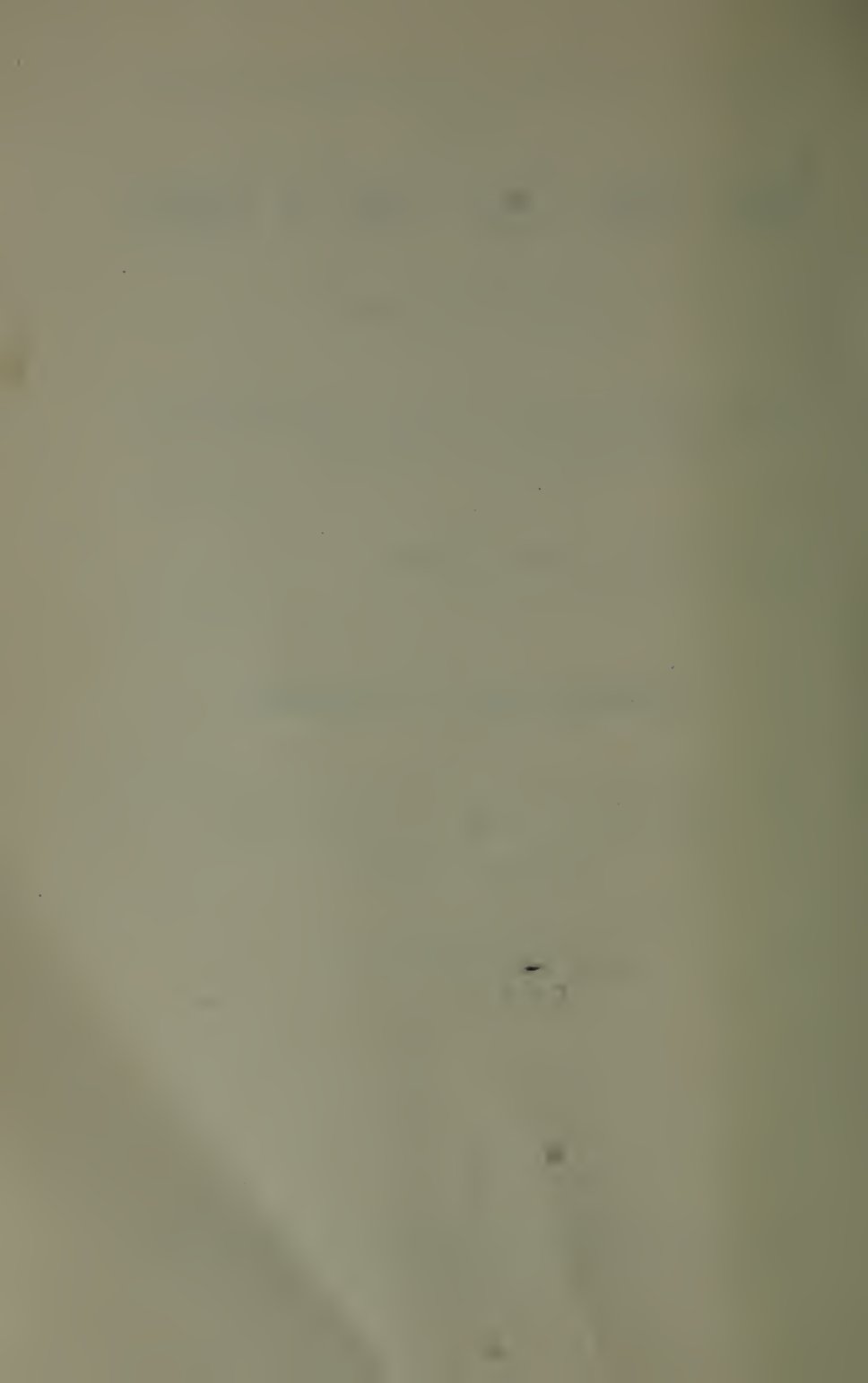
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Testimony of F. O. Hudnutt.

A. Yes, sir.

(Paper marked complainant's exhibit No. 11).

Mr. AVERY: I offer this last paper in evidence.

Mr. BLAIR: No objection.

Q. Doctor, I think you told me, but I am not sure, when this exhibit No. 10 was issued?

A. I think that was printed—when it was printed?

Q. When it was issued or distributed?

A. It was issued in 1907.

Q. I believe in your other answer you said 1907 or '08, didn't you?

A. Yes, but 1907 was when it was printed.

Q. And issued thereafter?

A. It was issued about that time, at the end of the year.

Q. I call your attention to a pamphlet, a printed pamphlet or sheet with what appears to be 6 pages and this is a folder entitled "Looking Backwards," do you recognize that Doctor—it is signed at the bottom, "Dr. F. O. Hudnutt"?

A. Yes, sir.

Q. Do you recognize that?

A. Yes, sir.

Q. Was that issued by the company?

A. That was issued by me.

Q. Well the company knew that you issued it, didn't it?

A. Well I suppose it did, yes, sir.

Q. The company also knew that you issued exhibit 10, didn't it?

Testimony of F. O. Hudnutt.

A. Which was 10?

Q. Yes, sir.

A. Yes, sir.

Q. Referring to this folder, "Looking Backwards," when was that issued?

A. I could not say—Feb. 22, 1909.

Mr. AVERY: I offer this in evidence.

Mr. BLAIR: I have no objection.

(Exhibit marked complainant's exhibit No. 12).

Q. I call your attention to the map in exhibit 11—the second map in exhibit 11, which is on the next to the last page, and which is entitled "Nespelem Mining, Milling & Development Company, Moses Mining District, Okanogan County, Washington", and I ask you if what appears to be the claims located on that map are the claims belonging to the defendant?

A. No, sir, part of them are.

Q. Which part are they?

A. These claims up here (indicating).

Q. You refer to—?

A. What is called the Squaw Mountain, the Squaw Hump claims.

Q. Just indicate the Squaw Hump Mountain?

A. This is it (indicating).

Q. You have other claims besides those, are they on this map?

A. They don't show on this map because they are north of it.

Q. They are north of it?

Testimony of F. O. Hudnutt.

A. Yes, this was an old map that was gotten out a long time ago.

Q. These last three exhibits that I have been calling your attention to, numbers 10, 11 and 12 were not given to me by you, were they?

A. No, sir.

Q. Or by any one interested in the company as far as you know?

A. Not that I know of.

Q. Now, Doctor, calling your attention to defendant's exhibit "F"?

A. Yes, sir.

Q. I noticed that when you formerly put that in evidence you took the contents from two small bottles?

A. Yes, sir.

Q. And put them in there?

A. Yes, sir.

Q. And the two small bottles, the contents of them, constitute what is now in this defendant's exhibit "F"?

A. Yes, sir.

Q. Is there any particular reason why those were separated before they were put in this exhibit "F"?

A. No, sir, only for this reason that I had two bottles in my pocket that time and I filled one and didn't have enough—I filled it full and shook it down and crowded it in and found I didn't have room in filling that and so I put the balance in the small bottle. I had two or three bottles that was used. I think I could put all of it in one of these bottles?

Q. Have you got those two bottles now with you?

Testimony of J. R. Gilfellen.

A. Yes.

(Witness produces them)

By Mr. AVERY: I think that is all.

Witness excused.

By Mr. BLAIR: I wish to recall Mr. Gilfellen and ask him a few questions on direct examination.

J. R. GILFELLEN, recalled for further examination, already sworn.

DIRECT EXAMINATION (Cont.)

By Mr. BLAIR:

Q. Mr. Gilfellen I want to ask you with reference to your knowledge upon the presence or absence of bed-rock or bedrock clay upon the Peabody and Wickman placers. Can you state what is your knowledge in that particular?

A. Well on the Peabody, on the south side of the Nespelem where the large bank of gravel is the clay bed-rock shows along the low water mark about, well two-thirds of the way along the high bank of gravel, and then on this strip of land that is vacated here along the bank—on this strip of ground in '98 we found the clay bedrock on the bank of the river pretty well exposed, oh between 300 and 400 feet over there.

Q. Is there any clay to the north in the Panhandle up there?

A. How is that?

Q. Is there any clay in the Panhandle—this narrow strip up here (indicating)?

A. Up here (indicating)?

Q. Yes, sir.

Testimony of J. R. Gilfellen.

A. There is large banks of clay there.

Q. State whether or not that clay runs along the Columbia and on to the excluded strip?

A. For about 300 or 400 feet.

Q. At what level does it appear along the Columbia, that is with reference to the water mark of the river, high water or low water mark of the Columbia?

A. Well the Columbia was middling low when we were there and it was just a little above the water mark.

Q. You stated that you noticed this on the Nespelem, was that on one side or both sides?

A. On the one side, the south side.

CROSS EXAMINATION.

By Mr. AVERY:

Q. Where did you see the clay there for 300 or 400 feet?

A. On this strip.

Q. On the excluded strip?

A. Yes, sir.

Q. How deep was it?

A. I don't know that.

Q. How much below the surface?

A. Well in places, different distances.

Q. From 8 to 30 feet?

A. Well somewhere from 15 to 35 or 40.

Q. Somewhere from 15 to 35 or 40?

A. Yes, sir.

Q. How deep was the gravel above it?

A. Well it runs there from 4 to 10 or 12 feet, something like that. I didn't make any measurement of it.

Testimony of L. K. Armstrong.

Q. That clay along the excluded strip dips to the southeast, I believe, doesn't it?

A. I don't know what you mean by dips.

Q. Well don't you know what I mean by dipping?

A. Well there is a ditch, ledge and face.

Q. Is there a dip to the clay bedrock—one of the defendant's witnesses testified that the clay at the mouth of the Nespelem dipped to the southeast and I want to know if that is the fact?

A. Well I never went in on the clay far enough to know how far, which way it dipped—didn't pay any attention to the dip of it.

Witness excused.

L. K. ARMSTRONG, a witness called on the part of the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

By Mr. BLAIR:

Q. Your name is?

A. L. K. Armstrong.

Q. Where do you reside?

A. Spokane.

Q. How long have you lived in Spokane?

A. 19 years.

Q. What is your business or profession, Mr. Armstrong?

A. Mining engineer.

Q. Have you ever done any mining?

A. Have I ever mined?

Q. Yes, sir?

Q. You are by profession a mining engineer, are you?

Testimony of L. K. Armstrong.

A. Yes sir, I am.

Q. How long have you practiced that profession?

A. More than 20 years.

Q. How long have you been in Spokane?

A. 19 years.

Q. Have you been practicing your profession as mining engineer here during that time?

A. I have.

Q. Have you ever had any experience in placer mining?

A. I have.

Q. In a practical way?

A. Yes, sir.

Q. In a professional way also?

A. I have.

Q. State where you had experience in a practical way?

A. In the Black Hills.

Q. The Black Hills in—?

A. South Dakota.

Q. Will you state the nature and length of your experience there and what you did?

A. I was working for other people about three or four months, I have forgotten just now.

Q. What was the nature of the placer proposition there?

A. Ground sluicing.

Q. How is that?

A. Ground sluicing.

Testimony of L. K. Armstrong.

Q. Have you ever done any practical work in the working of placers elsewhere?

A. I have.

Q. Where is that?

A. In Washington.

Q. What part?

A. In the Swauk District in Kittitas County.

Q. What was the nature of the work and your connection with it?

A. Hydraulic mining.

Q. Is that located in any mountains?

A. In the Cascade Mountains.

Q. Cascade Mountains?

A. Yes, sir.

Q. Hydraulic mining?

A. Hydraulic mining.

Q. What was your connection with this work?

A. Manager of the property.

Q. And as manager what were your duties—what did you do?

A. I authorized and oversaw the work to be done, the character of it and saw that the work was carried out.

Q. Did you direct the work—did you direct the manner of mining?

A. I did.

Q. State the nature of your work upon that place with reference to machinery used?

Mr. AVERY: I think I will object to that as immaterial.

Testimony of L. K. Armstrong.

Q. You may answer?

A. The method of operation is by hydraulicking—what is known as the hydraulic method. We put the water upon the ground to be mined, under a head and pressure by means of a steel pipe and giant.

Q. The steel pipe had water flowing through it I suppose?

Mr. AVERY: Without making a specific objection to each question I object to all questions and answers concerning the witness' method of operation at this point that he speaks of in the Swauk district, on the ground that it is immaterial and incompetent. I will not repeat the objection each time.

A. Yes sir.

Q. State the nature of the placer at the Swauk district, at this place, with reference to its topography and elevation of the water there above the property and its general features?

A. The operation has been conducted on a bench, gravel bench and the water used on the property has been from two sources, one under a hundred foot head and the other under a hundred and twenty-five foot head.

Q. What was the nature of the ground worked?

A. Gravel.

Q. Did you have any bedrock there?

A. We did.

Q. What was the character of that?

A. The bedrock alternated between sandstone and slate and shales.

Q. Are you connected with the properties now?

Testimony of L. K. Armstrong.

A. I am.

Q. Can you state the cost of mining on that ground per cubic yard?

Mr. AVERY: In addition to the grounds already stated I make the particular objection to that that it is immaterial.

A. Yes, sir.

Q. Give us that approximately?

A. About 10 cents.

Q. Per cubic yard?

A. Per cubic yard.

Q. And that was the cost?

A. Yes, sir.

Q. Now have you done any other—have you ever done any other placer mining by hydraulicking?

A. I have.

Q. Where?

A. In Southern Oregon.

Q. Where was that?

A. In west from Gold Hill, about four miles from Gold Hill.

Q. How was that worked?

A. The method of operation was by hydraulicking.

Q. State the head of water, and so on?

A. We had a 60 foot head.

Q. What is that?

A. 60 foot.

Q. And how did you work it with reference to the appliances used?

Testimony of L. K. Armstrong.

A. We used similar appliances to what they do in all hydraulic mining, that is a giant—

Q. How did you convey the water to the giant?

A. Through a steel pipe.

Q. What was the character of the soil or dirt?

A. It was gravel, with a top sub-soil—top soil.

Q. Can you state approximately the cost?

A. The cost was about 5 cents per cubic yard.

Q. What was the head of water there, did you state?

A. 60 feet.

Q. Can you go further, Mr. Armstrong, and tell your professional connections with reference to any public or professional work that you have done?

A. I have made examinations of placers.

Q. What places?

A. I have made examinations of placer properties in Montana, Idaho, Oregon, Washington and British Columbia.

Q. For what purpose did you make those examinations?

A. For the purpose of reporting to other people on the advisability of investment.

Mr. AVERY: I would like to change the form of my objection as it would not go to this Oregon experience and others that he has given and I want it understood that my objection as to the Swauk Mountain applies to all of the experiences that have been testified to at other places, other than Nespelem.

Mr. BLAIR: All right.

Mr. ARMSTRONG: Swauk district.

Testimony of L. K. Armstrong.

Mr. BLAIR: He meant Swauk District.

Q. Are you a member of any institute?

A. Mining?

Q. Yes.

A. I am.

Q. Of what are you?

A. I am a member of the American Institute of Mining Engineers and of the Canadian Mining Institute.

Q. Have you ever done any panning, Mr. Armstrong—panning of gold?

A. Yes, sir.

Q. To what extent or how frequently would you say you have done this during your work in the placers that you have mentioned, the two placers that you have just mentioned—outside of the two?

A. I could not say specifically how often or frequently—perhaps two or three times a season, something like that.

Q. That is, you panned two or three times a season?

A. Approximately, yes sir.

Q. Are you familiar, Mr. Armstrong, with the Wickman and Peabody placers?

A. I am.

Q. Have you been upon them?

A. I have.

Q. For what purpose?

A. For the purpose of examination.

Q. When was that?

A. In June of this year.

Testimony of L. K. Armstrong.

Q. You went there at the application of the defendant?

A. I did.

Q. And upon my advice?

A. I did.

Q. Now, Mr. Armstrong, will you state the general configuration or the topography of the ground just back of the Wickman placer?

A. To the North?

Q. To the North?

A. It is rocky, broken by ravines.

Q. Those ravines lead down upon the property?

A. They do.

Q. Have you examined the property for the purpose of finding the appearance of gravel upon it?

A. I did.

Q. Will you state the result of that examination—where you found gravel?

A. I found gravel beginning above the cabin, would be the Peabody Placer, where exposures below the surface had been made, either artificially or by nature and at two or three points on the Wickman,—one place where a gully runs through it and one place where the ditch was dug.

Q. When you say ditch you refer to improvement No.—?

A. Improvement No. 3, I think it is.

Q. As appears upon the Wickman and Peabody Placers?

A. Yes, crosses them.

Testimony of L. K. Armstrong.

Q. Did you examine the south bank of the Peabody Placer?

A. I did.

Q. State the nature of the gravel deposit there?

A. It was gravel—the entire hill was gravel at the point where I examined it, which extends up to nearly opposite the cabin.

Q. What was the elevation of the gravel bank from the bed of the Nespelem, in estimating the height, approximately?

A. Elevation?

Q. Yes, sir?

A. About, the Peabody 75 feet, excepting the point where it run down.

Q. Did you examine the property elsewhere than at the point mentioned, for the presence of gravel. I ask now particularly with reference to the excluded strip, so-called?

A. I don't know that I understand the excluded strip?

Q. I will call it to your attention. In referring to the excluded strip we refer to this strip immediately South of the—well—southwest of the Wickman Placer and between the Wickman Placer and the Columbia River?

A. What was the question?

Q. Did you examine that?

A. I examined that.

Q. Did you examine it at the West end of the Wickman Placer?

A. I did—outside the limit.

Testimony of L. K. Armstrong.

Q. On the Placer or outside?

A. Both.

Q. On the excluded strip what did you find in the way of gravel?

A. I found gravel.

Q. Outside the Wickman Placer to the West?

A. To the West.

Q. Did you find gravel?

A. I did.

Q. Where did you find it there?

A. Found it in the gulch.

Q. What is the character of the gulch?

A. That serves as a drainage for the country lying to the North.

Q. What is the size of the gulch?

A. I should approximate it at the point I examined it at about 40 feet deep.

Q. How far is it from the West line of the Wickman?

A. I estimate it approximately—

Q. At the point—well—first how far is that gulch—
Mr. AVERY: Did you say 45?

A. Approximately 45. I think it was in the neighborhood of 300 feet.

Q. What depth of gravel did that show?

A. The gravel showed from the bottom, at the bottom and from to within 8 to 10 feet of the surface on the opposite side from which I was standing.

Q. You spoke of gulches leading down upon the property in this crystalline area North of the Wickman, do those ravines show gravel?

Testimony of L. K. Armstrong.

A. There is one of them does.

Q. Does it show gravel?

A. On top—yes.

Q. Along the ravine—the ravine?

A. Shows gravel, yes sir.

Q. You spoke of gravel over in the ditch, at what depth from the surface did it appear?

A. It could not have been more than four feet. The ditch was not deeper than that.

Q. Basing it upon the facts that you have testified to in reference to the gravel, what, in your opinion is the truth in reference to the presence or absence of a general layer of gravel underlying these two placers?

Mr. AVERY: I object to that as incompetent. The witness has not qualified himself to answer the question. He is not competent to answer it.

Q. You may answer?

A. I have no doubt that there is, with minor exceptions.

Q. Now those rocks back to the North of the Wickman, what is the nature of those rocks?

A. They are crystalline rocks.

Q. Do you know whether or not they are mineral bearing rocks?

A. Considered so in that district?

Mr. AVERY: I move to strike out the answer as incompetent and hearsay, and a conclusion.

Q. Does it bear gold?

Mr. AVERY: I object to that as leading.

Q. What mineral does it bear if it bears any?

Testimony of L. K. Armstrong.

A. It is a common report that all the formations of the district carry gold.

Mr. AVERY: I object to that for the reason that it is incompetent and not the best evidence and a conclusion of the witness and hearsay.

At this point the hearing was adjourned until 2:00 P. M.

Spokane, Wash., July 22, 1909. 2:00 P. M.

Hearing continued, all parties being present.

L. K. ARMSTRONG, recalled for further examination.

DIRECT EXAMINATION (Cont'd).

By Mr. BLAIR:

Q. What is the nature of the surface of these two placers, Mr. Armstrong?

A. Much of it is overlaid with sand and light soil.

Q. Do you know the location of the dam on this property?

A. I do.

Q. Do you know the location of the flume bed—the flume bed that had been testified to in this case?

A. The flume bed leading from the dam?

Q. Yes, sir.

A. I do.

Q. What is the distance of the flume bed above the general level of the two placers, approximately?

A. The surface of the ground or the workable level?

Q. Well, take the surface of the ground first?

A. At the highest point I should think it was greater than 125 feet.

Testimony of L. K. Armstrong.

Q. Do you know the flow of the water in the river?

A. I do.

Q. What is it?

A. I know—not by measurement.

Q. What is the flow of the water in the river?

A. Estimating it at the time I visited the property in June—

Mr. AVERY: You mean you estimated it?

A. Yes, sir

A. At 3,000 miners inches.

Q. Did you look over the properties with reference to being hydraulickable?

A. I did.

Q. Did you?

A. I did.

Q. What was your opinion—what is your opinion in respect to that?

Mr. AVERY: I object to that as indefinite and incompetent.

Q. You may answer?

Mr. AVERY: I object as calling for a conclusion.

Mr. BLAIR: I am asking for his conclusion. That is just what we are after.

A. I regard the ground as economically valuable.

Q. By hydraulicking?

A. By hydraulicking for placer purposes.

Q. For placer purposes?

A. For placer purposes.

Q. Will you state those considerations found there

Testimony of L. K. Armstrong.

by you which leads you to that opinion—lead you to that opinion, and which it the most important?

A. I found abundant water with sufficient head, a good body of gravel and ample dumpage facilities.

Q. What is the head of water there?

A. Depends entirely where from. It is about 200 feet from the workable level, the top of the dump, or the bed of the flume.

Q. State whether it is possible to work these placers in a hydraulic way from the present dam level?

A. Yes, sir.

Q. State whether or not in your opinion that is a favorable location from which to work?

A. That is a favorable level from which to work on the two placers—it is a favorable level.

Q. State the level which in your opinion is the most favorable for working the placers,—that is, so far as head of water is concerned?

A. That is a question,—which might be two questions in there. We found conditions on the ground which were very favorable,—a high head—not too high,—gravel in quantity,—ample water and a good dump.

Q. What is the dump that you refer to?

A. The place where the debris or tailings, so called, may be deposited.

Q. Where would you place the dump?

A. In the Columbia river.

Q. Are you familiar with the location of the flume bed, the flume cut shown on defendant's exhibit "I"?

A. I am.

Testimony of L. K. Armstrong.

Q. Also on defendant' exhibits "G" & "H"?

A. I am.

Q. State whether that flume bed is properly or improperly placed for the working of the property by the hydraulic method?

A. Properly.

Q. State how that flume level would be used properly, the flume bed shown here would be used?

A. The flume bed would be used for the bed of a flume conducted with proper grade, approximtaely at that level, around the hill front to the point at whatever ground might be worked, from which the ground might be worked.

Q. And after conducting it around the hill front what disposition would you make of the water and in what way?

A. I should deliver it onto the ground to be worked through a steel pipe.

Q. And for working it you would use the ordinary appliances would you?

Mr. AVERY: I object to that as leading.

A. I would.

Q. What appliances in addition to the steel pipe would you use?

A. In connection with the steel pipe?

Q. Yes, sir.

A. I should use a giant at the end.

Q. What is the ordinary method of hydraulicking?

A. Ordinary method—cutting down the bank.

Q. Have you made an estimate of the cost required

Testimony of L. K. Armstrong.

for placing a hydraulicking plant upon that property?

Mr. AVERY: I object to that upon the ground that it is incompetent and that the witness has not shown himself qualified to answer the question.

A. Roughly.

Q. Do you know the general cost of placing a hydraulicking plant upon the property?

Mr. AVERY: I make the same objection and, in addition, the one that the question is not definite.

A. Approximately.

Q. Will you state the various items of expenditure that would be necessary upon this property?

Mr. AVERY: I object as not being competent and also the witness has not shown himself qualified to answer the question and the question is too indefinite.

Q. You may answer.

A. Can I have the question read?

Q. Will you state the various items of expenditure that would be necessary upon this property—you may first answer whether you know?

A. I know.

Q. Will you please state?

Mr. AVERY: I make the same objection.

A. The construction of a flume at a sufficient grade around the front of the hill to a point approximately 6000 feet from the dam, of suitable proportions to carry 3,000 to 5,000 inches of water,—together with bridge work such as may be necessary, and pressure boxes at suitable points; construction of a ditch at a lower—suitable level, in which considerable fluming would be

Testimony of L. K. Armstrong.

required to convey the water around for sluice water; equipment; pipes of sufficient size and length, together with gates and standpipe?

Mr. AVERY: With equipment pipes, is that right?

A. I didn't mean to say that,—air pipes; giant; lighting plant; sluices, and the usual gold saving devices therein. Should I also state the buildings and tools and shops and things of that sort. I am not including those.

Mr. AVERY: Is that part of the necessary things?

A. Buildings, tools, shovels, etc.?

Q. Yes, sir.

A. Yes, sir.

Q. Approximately what would be the cost, if you made an estimate?

Mr. AVERY: I make the same objection.

A. I have.

Q. What is your estimate?

A. For such a plant as I have outlined here, in greater detail, approximately \$50,000.00. I wish to say that this includes the sawmill necessary for sawing the lumber and other items connected with that.

Q. Have you estimated the approximate cost per cubic yard for working these placers?

Mr. AVERY: I object to that for the same reason—the last stated objection.

A. I have.

Q. Can you state that estimate?

A. Not to exceed 4 cents per cubic yard.

Q. Do you know Mr. Armstrong, the amount of horsepower contained in the river?

Testimony of L. K. Armstrong.

A. Horse power is a relative term and in order to know the horsepower of any stream it is necessary to know at what point it is to be used at and that sort of thing. If I may know definitely at what point below it is to be used I could state more specifically.

Q. Well, give the horsepower at—do you know the location of the foundation for the power house spoken of heretofore by the witnesses?

A. I know the location of a foundation said to be a power house.

Q. Relatively with the flume bed?

A. Relatively with the flume bed, yes sir.

Q. About what is the fall at that point?

A. As I recall it it is about 125 feet.

Q. Have you estimated the horsepower there?

A. I did not estimate it, no sir, I did not.

Q. You say 125 feet?

A. Yes, as I recall it.

Q. You didn't measure it.

A. I did not.

Q. Well, Mr. Armstrong, I call your attention to a plat marked complainant's exhibit No. 4, and call your attention to improvement ditch No. 3 running across those two properties and ask you whether that ditch is available for placer mining purposes upon those two placers?

A. Yes, sir.

Q. Will you describe the principal function of that ditch—the way in which it can be used?

A. To connect it at the point where it is disconnected

Testimony of L. K. Armstrong.

—and of course with the water, it would furnish what I have formerly referred to as sluice water which we use in the washing of the gravel in all the sluices.

Q. Do you know how far its eastern end is from the river?

A. At its eastern end?

Q. Yes, sir.

A. Near by—just the distance I don't know,—easily connected.

Q. In what way could it be connected?

A. Might be connected by a flume.

Q. Could you connect it by a pipe?

A. Might be connected by a pipe.

Q. Mr. Armstrong, did you do any panning upon these properties when you went down there?

A. I did.

Q. Where did you pan?

A. I panned along the Nespelem river on both sides.

Q. Did you find any gold?

A. I did.

Q. What was the character of gold you found in point of size?

A. It was comparatively coarse, easily distinguishable without the aid of a microscope as individual particles, with few exceptions.

Q. I will call your attention to defendant's exhibit "F", and ask you to look at the contents.

(Witness does so).

Q. Can you state whether or not the gold found by you is similar to the gold contained in the bottle?

Testimony of L. K. Armstrong.

Mr. AVERY: I object to that as leading.

A. Similar.

Q. Did you weigh any of the particles found by you?

A. I did.

Q. How many did you weigh?

A. I weighed 17.

Q. What did they amount to in point of value?

A. I first weighed—

Mr. AVERY: I object to that as calling for a conclusion and it is incompetent.

Q. You may answer?

A. A trifle over one cent.

Q. State whether or not they were or were not the average colors found by you?

A. Three of these pieces weighed one-half cent.

Q. Three of them weighed a half a cent?

A. Three of them weighed a half a cent, were the largest that I, myself, found. The other fourteen were among the smallest particles which I took from all the pannings which I made.

Q. Do you know the number of particles found by you in your panning, approximately, that is, in your average pan?

A. I estimated the average pan at 12 particles.

Q. Basing your estimate upon the testimony of the complainant that there were 150 pans contained in a cubic yard, what would be the value per cubic yard?

Mr. AVERY: I object. That is a matter of computation and also it is not based on anything except the counsel's statement and also on the ground that a pan

Testimony of L. K. Armstrong.

of dirt may in some places, I understand, be larger than another pan of dirt, pans of dirt may vary and those taken by one person vary from those taken by another.

Q. You may answer?

A. About 12 cents.

(Defendant's exhibits Nos. K, L, M, N, O, P, Q, R, & S, marked).

Q. Calling your attention, Mr. Armstrong, to defendant's exhibit "K", to this which is marked defendant's exhibit "K", I ask you what that is?

A. A photograph of a portion of the Peabody placer looking on the south side of the Nespelem river.

Q. Will you state what that photograph shows?

Mr. AVERY: I object to that. The photograph speaks for itself, and it is not the best evidence and the witness' conclusion about a paper which shows on its face what it is,—that photograph shows what it is.

A. Did you see the place depicted in the photograph or picture at the time it was taken?

A. I did.

Q. Will you state what it is and what it shows?

Mr. AVERY: I make the same objection.

A. This is a photograph of a portion of the Peabody Placer on the south side of the Nespelem river, a gravel bank more than 75 feet high.

Mr. BLAIR: I offer that in evidence.

Mr. AVERY: I object to the writing on the reverse side of the picture, except the writing "Defendant's exhibit "K"."

Q. I call your attention, Mr. Armstrong, to the writ-

Testimony of L. K. Armstrong.

ing on the back of the picture and ask you whether it states the truth in respect to that which appears on the front?

Mr. AVERY: I object to that as not the best evidence and leading and incompetent.

Q. You may answer.

A. The writing on the reverse side is the fact so far as it goes.

Q. I also call your attention to the writing on the back of the exhibits of defendant from "K" to "S", both inclusive, and ask you who made that writing, that is, other than that part which is the words "Defendant's exhibit" in each case.

Mr. AVERY: I object to that as immaterial and incompetent and the papers are not the best evidence.

Mr. BLAIR: I will offer them.

Q. I ask you who did the writing on these papers just mentioned with the exception of the words I have stated?

A. I did.

Q. State whether or not those writings or inscriptions state the truth with respect to what appears on the front?

Mr. AVERY: I object to this for the picture shows for itself without any explanation and for the second reason it is incompetent and not the best evidence and misleading.

A. Well, I should have to look at the front and see.

Q. I call your attention to defendant's exhibit "L", Mr. Armstrong, and ask you to tell what that is?

A. That is a view—

Testimony of L. K. Armstrong.

Mr. AVERY: I make the same objection. The picture shows for itself,—and is incompetent.

A. Boulders and gravel along the bench line of the Wickman placer.

Q. State whether or not the inscription upon the back—?

A. The inscription upon the back is a fact.

Mr. BLAIR: I offer that in evidence, this defendant's exhibit "L" in evidence.

Mr. AVERY: I object to the admission of defendant's exhibit "L", and to that part of it which appears on the back, except the exhibit mark, for the reason stated in respect to that.

Mr. BLAIR: In respect to all of these pictures you may have the same objection in the same way.

Q. I call your attention to defendant's exhibit "M" and ask you what it is?

A. That is a picture of the gorge leading from the foothills across both the Wickman and Peabody placers any emptying on the lower ground on the North side of the Nespelem river.

Q. Where was this particular picture taken, on the Wickman or Peabody?

A. Taken as near the line as I could get.

Q. Refer to the inscription on the back and state whether or not it is true?

A. It is.

Mr. AVERY: I make the same objection. These objections that I have made in respect to these photographs go to all of them.

Testimony of L. K. Armstrong.

Mr. BLAIR: I offer defendant's exhibit "M" in evidence.

Mr. AVERY: Same objection.

Q. I call your attention to defendant's exhibit "N" and ask you what that is?

Mr. AVERY: Same objection.

A. Showing the character of the ground on a point north of the Nespelem river, at a point on the North side of the Nespelem river.

Q. What does it show,—on the surface?

A. That is the surface, yes sir.

Q. Refer to the inscription on the back and state whether or not that accords with the truth?

A. It does.

Mr. BLAIR: I offer in evidence defendant's exhibit "N".

Q. I call your attention to defendant's exhibit "O" and ask you what that is?

A. That is another photograph taken on the North side of the Nespelem river showing the character of the boulders and gravel on the Peabody placer.

Q. In respect to the inscription on the back, is it correct?

A. It is correct.

Mr. BLAIR: I offer defendant's exhibit "O" in evidence.

The complainant takes the same objection.

Q. I call your attention to defendant's exhibit "P" and ask you what that is?

A. That is a photograph taken on the North side, a

Testimony of L. K. Armstrong.

point on the North side of the Nespelem river showing the gravel in the Peabody placer.

Q. I call your attention to the inscription on the back and ask you whether it is true?

A. It is.

Mr. BLAIR: Now I offer defendant's exhibit "P" in evidence. The same objection by complainant.

Mr. AVERY: These are all under my objection.

Q. I call your attention to defendant's exhibit "Q" and ask you whether the inscription upon the back of it is true?

A. It is.

Q. What does that photograph show?

A. It shows the character of the gravel at a point on the North side of the Nespelem river on the Peabody placer.

Mr. BLAIR: I offer defendant's exhibit "Q" in evidence.

Q. I also call your attention to defendant's exhibit "R" and ask you what that is?

A. That is a photograph which I took of a point on the South side of the Nespelem river of a low bench on the Peabody Placer.

Q. What is this water here (indicating)?

A. Yes, the Nespelem river.

Q. And who is the individual across there?

A. That is Dr. Hudnutt, F. O. Hudnutt.

Q. Is the inscription on the back of that correct or incorrect?

A. Correct.

Testimony of L. K. Armstrong.

Mr. BLAIR: I offer defendant's exhibit "R" in evidence.

Q. Now I call your attention to defendant's exhibit "S", Mr. Armstrong, and ask you what that is?

A. That is a photograph of a rock in a place a little to the North of the Wickman placer, showing a point where a claim,—that is a lode that has been worked upon.

Q. I call your attention to the inscription on the back and ask you whether that is correct or incorrect?

A. It is correct.

Mr. BLAIR: I offer defendant's exhibit "S" in evidence.

Q. How far is that rock removed from the North line of the Wickman?

A. The Wickman—a hundred yards or less.

Mr. AVERY: I object to its admission on all the grounds I have stated and the additional ground that it is immaterial and incompetent because it is not on these claims and does not have a tendency to prove or disprove any issue in the case.

Mr. BLAIR: Now I offer in evidence these defendant's exhibits which have been identified by Mr. Armstrong, and in order not to overlook them,—the offering of them in evidence,—I now offer in evidence all these exhibits from "K" to "S", inclusive.

Mr. AVERY: I object because they have already been offered in evidence and on all the grounds I have stated.

Testimony of L. K. Armstrong.

CROSS EXAMINATION.

By Mr. AVERY:

Q. Mr. Armstrong, I call your attention to the second page of complainant's exhibit 10, and will ask you if you are the person photographed in there, the person to the right; there are two figures in there?

A. That looks like me; that resembles me.

Q. It is you, isn't it, Mr. Armstrong?

A. I presume it was.

Q. Do you have your office with the office of the company?

A. The company has their office with me. We are in the same office.

Q. You are a stockholder of the company?

A. I am.

Q. The defendant I refer to when I say company?

A. Yes, sir.

Mr. BLAIR: There is one thing I omitted with Mr. Armstrong and I would like to ask him about it,—Mr. Armstrong you have a little map which you were using there?

A. I have.

Q. Map marked defendant's exhibit "T".

Q. I call your attention to defendant's exhibit "T" and ask you to state what that is?

A. That is a sketch of the Wickman and Peabody Placers and the surrounding country.

Q. By whom was that made?

A. By myself.

Q. State whether that is a correct representation of

Testimony of L. K. Armstrong.

the general features of the Wickman and Peabody Placers?

A. It is fairly accurate,—meant to be accurate.

Q. State whether or not it represents the general location of the Nespelem river with reference to the Peabody Placer?

A. It does.

Q. And with reference to the gulches marked thereon?

A. It shows as accurately as was possible to get it.

Q. I call your attention to the sand dunes marked here?

A. Approximately correct.

Q. And with relation to the Columbia river?

A. Approximately correct.

Mr. BLAIR: I now offer defendant's exhibit "T" in connection with this witness's testimony and in explanation thereof.

Mr. AVERY: Q. Let me ask, Mr. Armstrong, does the arrow indicate North?

A. Yes, sir.

Q. What is that along there (indicating)?

A. Bench.

Mr. AVERY: I object to its admission in evidence because it is on its face more than a map. It is not the best evidence of what it purports to be in respect to the other features than a mere map. It is incompetent also in that it contains a statement in writing which is no part of a map.

By Mr. BLAIR:

Q. Mr. Armstrong, will you look at the writings on

Testimony of L. K. Armstrong.

the face of that and state whether or not they were made in connection with the map?

Mr. AVERY: I object to that as leading and not the best evidence and incompetent.

Mr. BLAIR: It is a matter of indifference I believe.

Q. You may answer?

A. There is absolutely nothing on that there except what should be included to illustrate the geography, topography and geology of a map.

Mr. AVERY: I move to strike the answer because it is not responsive and contains in addition to the other matters a conclusion of the witness and is not the best evidence.

Q. I ask you, Mr. Armstrong, whether or not those inscriptions made upon that paper were not made as a part of the general drawing?

Mr. AVERY: I object, the same objection as to the last question and in addition to that it is leading.

A. They were made—they are a part.

Mr. BLAIR: I offer this in evidence.

Mr. AVERY: I make the same objection to this that I have made to the others and all of the objections that I have specifically made to it.

CROSS EXAMINATION.

By Mr. AVERY:

Q. You say you placer mined in the Swauk district?

A. Yes, sir.

Q. In this State?

A. Yes, I have.

Testimony of L. K. Armstrong.

Q. How many acres did you have—were you placer mining there?

A. Approximately 100.

Q. Are you mining there now?

A. We are.

Q. Somebody else you have got to work?

A. We are operating by lease now.

Q. Well, then, you mean you simply leased the ground?

A. This year, yes sir.

Q. And you are then not operating it yourself?

A. We are operating it under a lease,—leasing it to somebody else.

Q. When they are operating usually under a lease it is at so much per year or month or season?

A. So much royalty.

Q. So much royalty?

A. Yes, sir.

Q. What are they doing there now?

A. What do you mean, doing there now,—I have not been over there for about 10 days. At that time they were operating.

Q. Drifting?

A. No, sir.

Q. Do they drift in those placers?

A. No sir, they were hydraulicking.

Q. How much steel pipe have you got in there?

A. I have forgotten just how much.

Q. Did you put in the plant?

Testimony of L. K. Armstrong.

A. Oh, yes, sure, put in the larger one and bought the other one on the ground.

Q. You don't know how much steel pipe you have?

A. I have forgotten the figure.

Q. Well, approximately what is it?

A. Several hundred feet.

Q. Well that is not very close,—that is the nearest you can put it at?

A. Yes, practically.

Q. What size pipe?

A. Nearly all is 18 inch pipe.

Q. What is the other?

A. The other is 11.

Q. What river is that on?

A. The Swauk.

Q. You said you had a 60 foot head there?

A. I didn't say so.

Q. What did you say?

A. I said with one giant we had 100 feet and with the other 125 feet.

Q. Is that all gravel?

A. Practically all gravel and surface soil.

Q. How deep is the surface soil?

A. Varies from 2 feet to 6 or 8 feet.

Q. How deep is the gravel under that?

A. Varies from 6 feet to 35 feet.

Q. Where is the bed rock—at the bottom of the gravel?

A. Yes, sir.

Q. You said the bed rock alternated, did you?

A. I went up the sides of the gulch, this gulch here

Testimony of L. K. Armstrong.

A. I said so, yes sir.

Q. You mean that part of it was in stone, is that right?

A. Yes, all stone.

Q. Did you say part of it was stone and part of it was shale?

A. A, you don't understand me. I said part was sandstone and part shale and part slate.

Q. That is not a clay bottom there?

A. No, sir.

Q. A clay bedrock?

A. No, sir.

Q. It costs, I understood you to say 10 cents per yard to mine there?

A. Approximately, yes sir.

Q. I believe you said that the past few years you have panned two or three times a season, did you not?

A. I said it averaged about that.

Q. Where did you pan to make up that average this season?

A. I panned once on the Nespelem bar.

Q. On these claims?

A. On these claims and off these claims.

Q. On the Peabody?

A. On the Peabody and Wickman.

Q. Where did you pan to make up that average?

A. I panned in—

Q. Where did you pan in 1907 to make up that average?

A. 1907?

Testimony of L. K. Armstrong.

Q. Yes, sir.

A. I panned on the Swauk.

Q. Where did you pan in 1906?

A. I have not finished—I panned in several places in Southern Oregon.

Q. In 1906 or 1907?

A. 1907.

Q. Where did you pan in 1906?

A. Panned on the Swauk.

Q. Do you remember where you panned in 1905?

A. Well, that is getting back pretty well, Mr. Avery. I can say—previous to that that I cannot say for certain as to the time that I did any of that sort of work, but I panned in Idaho in the Tyson District and I panned in Montana.

Q. 1906 or 1905?

A. No, I was just saying—say that from 1905 back I cannot answer as to the specific times or where I panned or when; I cannot tell the number of places where I did pan and the specific times when I panned.

Q. Cannot give specific years?

A. I cannot.

Q. Did you pan upon the Nespelem bar until this year?

A. I did not.

Q. Where did you pan on the Peabody?

A. Panned on both sides of the Nespelem river on the low ground.

Q. That is how far from the river, approximately?

A. Well, along the river.

Testimony of L. K. Armstrong.

Q. Along the river bank I suppose?

A. Along the river and back from the banks and on the high places here at different—here is the bench land.

Q. Now what points on the Peabody bench land did you pan?

A. I went up the sides of the gulch, this gulch here (indicating).

Q. Up the sides of the gulch on exhibit "M"?

A. Yes, sir.

Q. Is that the front part of the picture down in here (indicating)?

A. Oh, no, that is the back part into the hills, into the bench land several hundred feet from the river.

Q. How many pans did you take out of there?

A. I don't recall the number, three or four.

Q. How many did you take along the Nespelem?

A. I took along the Nespelem?

Q. Yes, on the Peabody?

A. Something over 20 pans.

Q. And where else did you take any pans on the Peabody?

A. On the Peabody I took pans from here (indicating) on this high bluff.

Q. On the South side?

A. On the South side.

Q. How many pans did you take on the South side?

A. I panned on that bluff, I panned two—panned four pans—I myself panned two of them.

Q. You panned two of them?

A. Well, I did the work.

Testimony of L. K. Armstrong.

Q. Where else did you pan on the Peabody?

A. I panned over some of these dumps—is that the improvement shaft (indicating)?

Q. You panned improvement shaft No. 2?

A. I think it was. I am not certain about that.

Q. Did you get any colors in improvement shaft No. 2?

A. Small color, yes sir. Not in the shaft.

Q. Not in the shaft?

A. No, sir, from the dump.

Q. Did you go down in the shaft?

A. I don't know whether it was that one or not.

Q. How many shafts did you go into?

A. I went into two.

Q. Where was the other one that you went into?

A. On the same ground.

Q. On the same land?

A. On the same property—you said the Peabody, didn't you?

Q. Yes, are those shafts down to gravel?

A. They are both closed.

Q. You said you found gravel on the Peabody where exposures had been made,—where there had been exposures either artificial or natural?

A. Yes, sir.

Q. Where did you find the natural exposures?

A. On the Peabody?

Q. Yes, sir.

A. Up the gulches as shown by these photographs.

Q. There are two gulches running across there are they?

Testimony of L. K. Armstrong.

A. Yes, there are more than that. There are some short ones there,—where did we find gravel, on the Peabody?

Q. Yes, sir?

A. There is one point.

Q. Where is it on the map?

A. Right here (indicating) along the South side of the Nespelem.

Q. Half way between the corner and the end line—corner 7 and the end line?

A. Yes, sir.

Q. Approximately?

A. Yes, sir.

Q. Were those natural exposures?

A. Natural exposures there in one place.

Q. On what exhibit is that?

A. That is exhibit “K”; the bank on the West side—or the bank on the south side, I should have said, of the Nespelem river. This side should represent the frontal, of the bench on the north side of the river on the Peabody Placer, on exhibits N, O, P, & Q.

Q. The gravel in the gulches was at the bottom of the gulches I suppose?

A. There was gravel at the bottom of the gulches and on the sides as well.

Q. How much surface dirt was there upon the gravel, above I mean?

A. It varied.

Q. What size of a variation was it?

A. At the frontals, near the mouth of the gulches,

Testimony of L. K. Armstrong.

there was practically none, and as we went back towards the hills northward it increased, that is, there was sand and that increased to a foot of it, perhaps three or four, might be as much as five.

Q. How many points of gravel did you find in prospecting on the Wickman?

A. I prospected at one point up this gulch on the Wickman.

(Question read).

Q. That is exposed gravel?

A. I found gravel in the gulch extending up the Wickman.

Q. Any other place on the Wickman?

A. Yes, I found gravel along the ditch line on the Wickman.

Q. In the ditch?

A. In the ditch and on the sides.

Q. At how many points, now, did you find gravel on the Wickman?

A. I think I found gravel—I don't recall the number of holes.

Q. Well, about how many points?

A. Oh, it may have been—all the holes that I visited with one exception showed gravel.

Q. And how many holes did you visit there?

A. Six I think,—no I could not tell just exactly about it. I think three out in there (indicating) and then there was three more up the other way.

Q. You stated in direct examination, did you not, that

Testimony of L. K. Armstrong.

you found gravel in two or three points on the Wickman, two or three places?

A. I stated where I did find—

Q. Did you state that on your direct examination?

A. I don't know whether I did or not.

Q. Is it true if you did state it?

A. I stated that I did find it specifically.

Q. In two or three points, is that right?

A. Yes, sir.

Q. You examined the excluded strip here on the Wickman, off the Wickman rather?

A. I did.

Q. You are not counting that examination in saying—in discussing the examination of the Wickman, are you?

A. No, sir.

Q. How many points did you examine on the excluded strip?

A. One single point, that is, relatively—it was near here (indicating).

Q. The southerly end of it?

A. That is the southerly end.

Q. Why didn't you go on up, or rather down the Columbia river on that trip?

A. Why didn't I?

Q. Yes, sir?

A. In the first place I could not have got along there if I wanted to.

Q. And you didn't want to?

A. I had no intention of doing it. The river was

Testimony of L. K. Armstrong.

very high and washed on the bank. It would have been impossible to have gone along there at the time I was there.

Q. You panned those sand dunes did you?

A. No, I did not.

Q. Any particular reason for not panning them?

A. No particular reason one way or the other?

Q. You panned the coulee or gulch north—at the northwestern end of the Wickman did you?

A. The northwesterly end,—no I did not pan that.

Q. Did you examine it?

A. I did.

Q. Any particular reason for not panning in there?

A. No reason.

Q. Could it have been panned?

A. Might have been.

Q. Was it susceptible of panning?

A. Certainly was.

Q. What was the character?

A. Gravelly,—principally gravel.

Q. What else?

A. The usual superincumbent sand and silt.

Q. Any dirt or light soil on top?

A. The top,—I have stated the character of the soil that is on the surface.

Q. Well, state it again?

Mr. BLAIR: Now I object, as ordinary dirt might mean different things in different places. It is rather general, Mr. Avery.

Testimony of L. K. Armstrong.

Mr. AVERY: Well, if the witness doesn't want to answer it let him say so.

Mr. BLAIR: What do you mean by ordinary dirt? I don't know what you mean. The term is altogether too broad.

Mr. AVERY: I do not have to indicate what is meant by dirt.

Q. You don't know what "dirt" means then?

A. I don't know what you mean by dirt.

Q. What do you mean by dirt?

A. I didn't state dirt. I stated the exact condition of the placer surface.

Q. Then you don't know what I mean when I asked if there was any ordinary dirt on the top of the surface?

A. I stated the character of the surface.

Mr. AVERY: Very well.

Mr. BLAIR: Answer the last question?

Mr. AVERY: I will examine the witness.

Mr. BLAIR: I object to the inference.

Q. Now Mr. Armstrong, how deep is the gravel?

Mr. BLAIR: All right,—go on.

Q. Now how far from the surface did the gravel commence?

A. At what point?

Q. At the point we are discussing in the gully there which is off the northwestern end of the Wickman?

A. At what point below the surface did the gravel commence?

Q. Yes, sir.

A. A few feet.

Q. Do you know how many feet approximately?

Testimony of L. K. Armstrong.

A. Less than 10.

Q. How deep down did it go?

A. To the bottom of the gulch.

Q. That would be about how many feet did you estimate?

A. That gulch had a rapid fall, Mr. Avery, to the point I now have in mind—it was about, I think, 40 feet.

Q. Now was that gravel all of the same character in this thickness. Was the top of the gravel the same as the bottom?

A. No it was not.

Q. What is that?

A. It was alternating.

Q. Will you describe it as near as you can?

A. I don't think that I can in detail.

Q. Did you make a very careful examination of it?

A. I looked at it.

Q. But you don't think you can describe it in detail. I am right about that, am I, Mr. Armstrong?

A. I could not specifically,—I could not. I remember that it was gravel about the point I stated.

Q. How about the gravel that you discovered, when you did discover it in the gulch, in the gulches of the Peabody and Wickman—how was the gravel at the point nearest the surface, what was its character?

A. In some cases it was very coarse and some cases it was fine, finer.

Q. Coarse and fine, of course, is a more or less relative term. What do you mean by coarse gravel?

A. It was gravel made up of variable sized rocks.

Testimony of L. K. Armstrong.

Q. Could you give any more definite description of it?

A. Yes I think I can. I can state that there was not anything that I saw that might not be moved by such a hydraulicking plant as I have suggested to put on the property.

Q. I am asking you if you can describe it?

A. It varies from fine gravel up to perhaps—oh, perhaps 18 inches to two feet in diameter.

Q. That was that nearest the surface of the earth or ground?

A. Yes, I will state that nearest the surface of the earth.

Q. What was its character—did it change as it went down?

A. Towards the bottom?

Q. Yes, sir?

A. The character of the gravel at different places on the gulches or gulch varied. I made the observation that the gravel all might be easily washed. It was not too large.

Q. Will you describe how it changed, if it did change, in its character?

A. There were no two points in any of the gulches that were identical, one with the other. At one point the gravel might be relatively the same and at other points it might change in its composition as to sizes and individual pieces.

Q. Then I take it from your statement that it was not a very uniform bed, is that right?

A. Uniform?

Testimony of L. K. Armstrong.

Q. Yes sir?

A. Fairly so.

Q. Up and down or sidewise, horizontally and in both respects?

A. Well, fairly uniform throughout; varied as those things will.

Q. I thought you said it varied—is that true that you thought it varied?

A. At different points,—it is variable as such gravels are.

Q. Are gravel beds always variable?

A. Variable up and down and sidewise, both ways to some extent, but fairly uniform throughout the mass.

Q. Now what basis have you to indicate to the Court in what respect it was variable, so the Court will understand it?

At some points there was quite large boulders in it. At other points there were fewer of them.

Q. How large boulders were there?

A. The boulders in the gulches sometimes went up to 2 feet in diameter.

Q. You don't know the character of the gravel that was not exposed?

A. I have said, Mr. Avery,—I would like to have asked a question now, I don't know.

Q. It is liable to have varied as it goes into the ground from the exposed point?

A. Some, perhaps.

Q. Well, it is variable, isn't it?

A. Within a reasonable margin.

Testimony of L. K. Armstrong.

Q. Now wherein did the gravel in the bank south of
"P"

the Nespelem that you have marked on exhibit "T",
vary from the gravel on the North bank of the river?

A. It was more uniformly coarse.

Q. How coarse did it get on the South bank?

A. Uniformly it was perhaps larger, the pieces were
not much larger, if any, than those on the North side,
but uniformly the balance of it was coarser.

Q. How big boulders did you find on the south side?

A. I found a few very large ones.

Q. How large?

A. I did not state.

Q. Then I ask you again?

A. Perhaps up to 3 feet in diameter, perhaps.

Q. At what point in the ditch did you find gravel?

A. At a point almost wholly on the Wickman.

Q. Near the Peabody line, north line?

A. Yes, extending westward.

Q. Well, you covered quite a space there Mr. Arm-
strong?

A. Certainly do.

Q. From where "placer" intersects with the north
line of the Peabody?

A. Yes, sir.

Q. Then you examined that in there, I suppose, did
you?

A. I went along it.

Q. Well, I didn't ask you if you went along it. I asked
you if you examined it?

Testimony of L. K. Armstrong.

A. I did.

Q. What do you mean by an examination; when you say you examined it, how did you examine it?

A. I examined it by walking in the ditch and along the side and taking the photographs of it, that is one way as a rule.

Q. You are looking at exhibit "L." Where is the ditch there?

A. On the other side of these boulders. These are boulders here (indicating).

Q. The ditch does not really show on the photograph, does it?

A. The bank of it, yes the bank.

Q. But the ditch itself,—I mean the excavation?

A. Yes the bank.

Q. I say the excavation does not show?

A. It does not.

Q. Now you say that there are some minor exceptions where gravel does not underly in these claims, is that right?

A. I am not certain that I made such a statement. I said with perhaps minor exceptions, I think.

Q. Well, now where were the minor exceptions that you referred to?

A. I noted one.

Q. Where was that?

A. On the Peabody placer.

Q. About where?

A. At about that point (indicating).

Testimony of L. K. Armstrong.

Q. Now you are pointing to the figures "39928" on exhibit No. 4?

A. Well, those figures are probably 100 feet long or more, somewhere along about there.

Q. Well what—wherein did there appear to be a lack of gravel there, could you describe it, Mr. Armstrong?

A. In what way?

Q. Why it could be noted?

A. At the point I have stated there was some clay exposed and evidences of still water depositions.

Q. Well, that was how far from the river?

A. At the water's edge.

Q. At the water's edge?

A. Yes, sir.

Q. Well, when you said that there were minor exceptions or possibly minor exceptions to the fact that gravel underlaid—what do you mean that it lay under—underlaid what—what do you refer to?

A. I think my answer, Mr. Avery, was—it was in answer to a direct question. I do not recall the question.

Mr. BLAIR: Q. What was the question?

A. I don't remember what the question was.

Q. Well, is it a fact that the gravel does not underlie all of the two claims?

A. I don't know that it is.

Q. You don't know whether it does or does not—is that what you mean to say?

A. No. I meant to answer your question. I don't know that it does not underlie it.

Testimony of L. K. Armstrong.

Q. You don't know that it does not underlie, is that right?

A. That it does not underlie it?

Q. Now so we can get together, Mr. Armstrong, does the gravel underlie all of the two placer claims?

A. Does it?

Q. Yes, sir?

A. I could not tell.

Q. You could not tell?

A. No. I want now to enter an exception before you leave this particular subject.

Q. Your examination of the claims was not such as would enable you to state whether or not the gravel underlaid all the claims, was it?

A. It was of a nature—my examination was not of a nature that I could state whether it did or not.

Q. Your examination of the claims was not such as would enable you to state whether or not the gravel underlaid the claims?

A. My examination was of a character which lead me to believe that the greater part of them was underlaid with gravel—of both claims was underlaid with gravel.

Q. But didn't you—did you feel more certain about this on one claim than on the other?

A. No, sir, I did not.

Q. You are equally certain as to each of the claims?

A. I was equally—I believed it to be equally true as to both claims.

Q. Now you stated, I believe, in your direct examina-

Testimony of L. K. Armstrong.

tion that the claims were considerably or much overlaid with sand and light soil, that is right, isn't it?

A. I am not certain I stated that, probably if I said that I would like to alter it.

Q. What is the fact about that?

A. The fact is that it is overlaid largely at greater or less depth.

Q. With sand and light soil?

A. Sand and light soil or silt. Before we get away from this one, I don't want to be misunderstood on this one proposition.

Q. If you want to make any explanation you are at liberty to do so?

A. I want to state specifically that there was a bed of clay lying in the upper end of the Peabody placer.

Q. Where is that?

A. Down here (indicating).

Q. You are pointing at a point between corners one and two on the Peabody, are you not?

A. Approximately, on the north side of the river.

Q. You say that you regard the ground as economically valuable by hydraulicking, isn't that right?

A. Yes, sir.

Q. Referring to both of the claims?

A. Referring to both of the claims.

Q. Do you think that the one is equally as valuable as the other?

A. I have no reason to doubt that they are equally valuable.

Q. Now why do you say they are economically val-

Testimony of L. K. Armstrong.

uable—and may I ask you in this respect what you mean by economically valuable?

A. As placers?

Q. Well, is that what you mean, as placers?

A. Certainly.

Q. Well, as placers?

A. There is a margin of difference between the production and cost, including installation and operation.

Q. Well, is there any particular reason for using the words “economically valuable.” What do you mean when you said “Economically valuable by hydraulicking?”

A. I should perhaps make a little different statement on it. I think—

Q. I will ask you the question. I will ask you—you said, I understood you on your direct examination to say that the claims were economically valuable by hydraulicking. Now I will ask you what you mean by economically valuable, and also what you mean if you said “valuable by hydraulicking” leaving out the “economically?”

A. It would probably have the same meaning.

Q. Then “economically” didn’t limit, did it, or subtract from the answer?

A. Nothing.

Q. You don’t think that it would have to be worked economically in order to be valuable by hydraulicking?

A. I do not.

Q. Will you state the reason for using that expression, using that word?

A. Economically in geology, the term economically

Testimony of L. K. Armstrong.

means in regard to mines whereas the term used generally means any valuable mineral deposit, instead of mines.

Q. Now your reason, I think you gave it, I guess, but will you repeat it if you did,—your reason for arriving at that conclusion?

A. That the property might be worked economically?

Q. Might be economically valuable?

A. By examination.

Q. The water, of course, is an important feature, isn't it?

A. Very.

Q. And the amount of soil to be reduced is a prominent feature?

A. The amount of material.

Q. The amount of material?

A. Yes sir.

Q. The amount of barren material is an important feature isn't it?

A. Yes, sir.

Q. The character of the gravel, does that have any significance?

A. Yes.

Q. What kind of gravel do you estimate can be most economically worked by hydraulicking, without relation to the contents at all, that is, the valuable contents?

A. Valuable contents?

Q. Yes, sir.

A. Large banks or gravel deposits.

Testimony of L. K. Armstrong.

Q. Clean gravel as distinguished from that which contains—

A. I am continuing my answer.

Q. Very well?

A. Large banks or gravel deposits containing no or few boulders of a size which cannot be run through the sluice way and containing little or no cement.

Q. In your deciding that this was a valuable property—what size steel pipe did you think should be worked on it?

A. That would depend entirely on how many giants, whether the water was taken out in one or more and how it would be distributed.

Q. Well when you were figuring on the value of these as a placer proposition, how many giants were you assuming would be used?

A. At least two a good part of the time.

Q. How far apart are they?

A. The giants?

Q. Yes?

A. Might put them on a “Y” probably.

Q. That is, approximately together?

A. Worked in the same bank.

Q. How far apart would they be?

A. They might be 5 or 10 or 15 feet apart for distribution; they might exceed that. The water would be brought down onto the ground in a single pipe.

Q. Now in your estimation of the value of these as placers where would you have the dump? That is one of the most important features, isn't it?

A. In the Columbia River.

Testimony of L. K. Armstrong.

Q. Whereabouts in the Columbia River?

A. At any point most available.

Q. Hadn't you decided on that "any point" when you made the estimation?

A. There was no necessity for it.

Q. No necessity for telling at all?

A. No sir; it didn't require it. It is of minor importance.

Q. What right would you have to dump in the Columbia River?

A. What right?

Q. Yes, sir?

A. There is no law against the right to do it.

Q. You say there is no law against the right to dump in the Columbia River?

A. No law that I was aware of.

Q. How long have you been hydraulic mining?

A. Several years.

Q. And you say you don't know of any law that prevents dumping in a navigable river?

A. That stream is not navigable at that point, I believe.

Q. What do you deem a navigable river?

Mr. BLAIR: I object to this inquiry. It makes no difference whether the witness has or would have a legal right in connection with the dump.

Q. What do you deem a navigable river?

Mr. BLAIR: I object to that as immaterial and irrelevant.

A. A stream upon which navigation is conducted, may

Testimony of L. K. Armstrong.

be conducted, at regular intervals, the year round or at any one particular season.

Q. How many cubic yards would you have to remove, Mr. Armstrong, in order to work these placers?

A. With profit, you mean?

Q. Yes, sir.

A. Why, I could move more than would be necessary.

Q. What is that?

A. I could move more than would be necessary and make it profitable.

Q. I ask you how much you would have to move in order to make the placers profitable?

A. I did not figure on how little or how much, but how much might be done and upon that basis I had figured that it would be profitable.

Q. What would be profitable?

A. Operations.

Q. Well, didn't you figure on how much material you would have to move by hydraulicking?

A. I figured how much I should move, would move.

Q. You would have to go to bedrock, wouldn't you?

A. No sir, I would not.

Q. But in working these by hydraulic process wouldn't you go to bedrock?

A. If bedrock was available I should.

Q. What do you mean, just to understand again, you said "I should go to bedrock," what do you mean by that answer?

A. When I was on the ground the Columbia River was pretty high and I didn't observe bedrock.

Testimony of L. K. Armstrong.

Q. Did you figure in estimating on the value of this property as a hydraulic proposition that they would have to go to bed rock, or would go to bedrock?

A. No, I did not, unless it happened to be there above water level.

Q. How far down did you expect to go?

A. Within a few feet of the water level.

Q. But the nearer the bedrock, isn't that the most valuable material?

A. Not always.

Q. Isn't it generally?

A. The nature of deposits differ widely.

Q. Well, how do they differ?

A. If I wanted to go on I could talk here all the afternoon about the difference, probably—yes, generally.

Q. Isn't it almost universally true that the nearer bedrock you go the richer material you get and the more gold you get?

A. Not universally, no sir. It is generally accepted that it would be unless there are other matters which change it.

Q. Well, you didn't think it was necessary in this case to go to bedrock?

A. I did not.

Q. What is the effect—when you knock gold out of the upper portion of the material where deposit go?

A. It goes down.

Q. In hydraulicking?

A. Goes down.

Testimony of L. K. Armstrong.

Q. Goes down on the bottom of the surface at that point, doesn't it?

A. I don't think that it could be the bottom of the surface—you mean it goes—

Q. It goes down to the surface along at that point?

A. It washes down with the balance of the material.

Q. Well, if you don't go to bedrock what is to hinder this gold from getting in between the larger and coarser pieces of gravel?

A. Oh, to obviate that it is just as well to put your sluices well up to the point of operation.

Q. But the finer gold is liable to be carried off, blown off, washed off, into the coarse gravel at the bottom, isn't it?

A. There are ways of preventing very much loss.

Q. What ways are there?

A. Work in benches, for one.

Q. You think it is economical there?

A. It can be worked economically and not go to bedrock, certainly.

Q. Well, how do you approach a piece of dirt or gravel or land that you are going to hydraulic, or mine by hydraulicking. I wish you would describe it to me as near as you can, Mr. Armstrong?

A. Why, it depends a good deal upon the configuration of the land. I would say, yes. How would I work on these Peabody and Wickman placers? I should operate it off a face of course.

Q. Commence at the bottom do you mean, or off in the river?

Testimony of L. K. Armstrong.

A. Not necessarily,—at the outside.

Q. Where were you figuring on doing this when you made your estimate?

A. I was not figuring on any specific point.

Q. Do you mean to say that you made an estimate of the value of this per yard and did not figure on any specific point?

A. At which I would start operations?

Q. At which you would conduct them?

A. Not at which I should start them,—certainly start at the face somewheres.

Q. Well, where did you decide in making your estimate, where would you commence in this case?

A. No, I think not.

Q. Well, can you tell now where it would be necessary to do it?

A. There would not be any necessity for any special point. There was numbers of places that might be started.

Q. Where, in your estimation, would be the best place to start?

A. I have not figured that out. I know it for a fact that it might be started at a number of different points on the front.

Q. Now give me your best judgment as to the best point to start?

A. Probably a point somewhere near there (indicating).

Q. Corner 4 of the Wickman?

A. Somewhere in that vicinity.

Testimony of L. K. Armstrong.

Q. Then you would be projecting your water against—in what direction, generally,—we will call it projecting it?

A. This is west (indicating)?

Q. That is west.

A. Having cut into the bank I could project it west or east.

Q. That would be in the Columbia River wouldn't it?

A. Westerly or northerly or easterly, I will say different in these places.

Q. Well, you would not mine off the claim?

A. I mean to mine on the claim.

Q. So you would not go westerly would you?

A. Yes, a westerly direction, over here (indicating) after I got in the bank.

Q. Then you would cut the bank down in what state, generally?

A. Oh, I would cut the bank down with the water, I would undercut it probably from different points making one giant cut against the other.

Q. How high above the gravel would this point be in the vicinity of corner four of the Wickman?

A. How high above gravel?

Q. Yes,—when you said you would commence—

A. Is this corner 4 here (indicating)?

Q. No, this (indicating) is corner 4 of the Wickman?

A. How high above it?

Q. Yes?

A. As I recall it the gravel is right—a part of the soil.

Testimony of L. K. Armstrong.

Q. I know, but how high above gravel is the point where you would start?

A. We would expose only the surface.

Q. Now this side (indicating) how would you cut off the bank, in a northerly direction generally—in a general direction northerly or easterly or westerly or north-westerly there?

A. Well, running east we would have to get water down here to the starting point near corner 4 of the Wickman and would bring that down here, a big part of it down this way, bring it over this way (indicating).

Q. Which way were you figuring on bringing it?

A. I didn't figure my point at all, it would be with reference to the best discharge, the best point of discharge, and from there to—

Q. Had't figured on the discharge, the best point of discharge?

A. I didn't figure on the details at all.

Q. And yet you made your estimate on the cost of the plant and the cost of working it per cubic yard?

A. Yes, sir.

Q. Now you would continue to—you would go along, I assume, if I am wrong correct me, and cut right along the gravel, undercut it, is that right?

A. Undercut beyond there and let the bank in.

Q. Then you mean starting there on the surface of the gravel you would cut right in on a level approximately?

A. Level and grade.

Q. Which way?

Testimony of L. K. Armstrong.

A. Level and grade up hill, of course. Then the surface we would leave on there would go off and run up hill some, slightly.

Q. You would continue that until you cleared off the claim above?

A. Not from one point of operation, by no means.

Q. Well, how would you?

A. I, just as I told you, Mr. Avery, according to conditions. If I was going to cut down into two parts and continue that operation of the placer, I should operate that placer at points that I considered was most feasible and most economical and that would easily determine the question—and give more strict attention to those particular points than I have done, if I had been going to answer this question.

Q. Then you cannot give the particular point in respect to the questions I am asking,—you have not gone into the details of that?

A. Not at all.

Q. In the consideration of them?

A. Not at all.

Q. Well, then, are you able to tell me how you would take off this portion of the Wickman that is north or northwest of the point that you said you would originally start from?

A. Am I unable to tell you that, tell you how I would cut it,—no I am not unable to. I can tell you.

Q. You are able to then?

A. Yes I am able to tell you.

Testimony of L. K. Armstrong.

Q. I want to know the way you would do it as being the most feasible?

A. There are three points. I should probably have to investigate the ground again to give you that information.

Q. You don't know then?

A. I told you here that I didn't

Q. Then your estimate was made without knowing the most economical ways of working that claim?

A. My estimate was made knowing that I could work the claim economically from either one of three different points, two or three different points.

Q. But you don't know which would be the most economical, is that right?

A. Your question is one that is difficult to answer for the reason that I should not place my pipe at the same point all the time.

Q. Well, for how far would you have it, being down along on this bank of the Wickman—

A. On the Wickman?

Q. Now how long would you have your giant there working up north and northeast?

A. Until I cleaned the gravel off.

Q. All the gravel north?

A. At a point most economical and then I would move it to a different point, at some different place along up there.

Q. Let's take the grade on this point we have here. You are on the level dirt there and you would hydraulic

Testimony of L. K. Armstrong.

on an up grade up here, well, north of that point, is that right?

A. At that point?

Q. Yes?

A. Probably not.

Q. Well, how long would you stay there?

A. I would stay there just as long as I could work more economically from that point than from any other.

Q. How long could you economically work it from that point,—can you tell now?

A. No, I cannot tell.

Q. Cannot tell anything about it?

A. No.

Q. What would govern you in deciding that question?

A. The operation.

Q. You mean the result of the operation?

A. Yes, sir.

Q. Well, let's be a little more definite than that. What particular feature of the operation?

A. The effectiveness of the water on the bank.

Q. How far would you have to throw the water?

A. I would not want to throw it far. Well, probably not—

Q. Well, how far would you have to throw it in order to do it as fast as you want to do it or to do it in the way you think it ought to be done?

A. I could very readily throw it a hundred feet or more.

Q. Then I understand you to say you are unable to tell at this time whether or not you would continue to

Testimony of L. K. Armstrong.

clear off from the point north of approximately corner 4 after changing your giant?

A. Continuing north?

Q. Yes, north and northeast?

A. How far?

Q. Up to the end of the claim?

A. I certainly should not. I am able to tell you that?

Q. Are there any conditions that would—that could exist that would permit you to clear right on up, after you had commenced here (indicating) and keep on clear up north of you, to the northeast?

A. It might be more desirous to throw somewhere else nearer.

Q. Now how deep is the gravel at that point, do you know?

A. I don't know.

Q. I refer to corner four?

A. Yes, the bank here (indicating).

Q. Yes sir, how deep is the gravel itself?

A. The point I speak of I should estimate it to be at least 25 feet.

Q. Well now let's see—we will go up here as far as we can on this land, then you have cleared off practically down to the gravel?

A. I didn't mention down to the gravel.

Q. What do you mean then—how do you mean?

A. I cleared the gravel down to a certain level at which I was working it.

Testimony of L. K. Armstrong.

Q. Well, you would be then after you had cleared it down at least or approximately 25 feet above bedrock?

A. I would be?

Q. Wouldn't you?

A. By what deduction?

Q. By the deduction that you said the gravel was there 25 feet deep?

A. I didn't say that there was any bedrock.

Q. Well, I will change that if you wish. Then you would still be 25 feet above the bottom of the gravel?

A. I might be.

Q. Well isn't that the most logical deduction, that you would be?

A. I cannot understand what that statement is based upon, Perhaps you can make a question that I can answer a little easier.

Q. Well, at the point where you have got your giant you said that the gravel was there 25 feet deep, didn't you?

A. Approximately.

Q. Now we have cleared to the north, in our imaginary operations, down to the top of the gravel, or at least to the level that you are on, with your giant inclining up hill. Now isn't it a fact that that incline commenced with the point on which you were using your giant, and below that there would be about 25 feet of gravel probably, in depth, a gravel depth of 25 feet?

A. I think we are at cross purposes. I didn't mean to be understood that there was 25 feet of gravel below my operations.

Testimony of L. K. Armstrong.

Q. I understood you to answer that.

A. I don't know—the question that was asked—

Q. How deep is the gravel at that point?

A. I said approximately 25 feet as far as I could see.

Q. That is what I thought you said.

A. But that is the face, not the bedrock, not below my operations.

Q. How deep, how much gravel was there below the point where you suggested starting?

A. I don't know.

Q. When you said that that would be a good place to start your operations, did you have in mind how deep the gravel was along there?

A. I had a general idea.

Q. What was your general idea as to that?

A. My general idea was—my idea was that the bench was made up almost wholly of gravel except at specific points.

Q. Well now will you tell me if you had an idea how deep the gravel was at that point of operation—did you have an idea how deep the gravel was at that point?

A. No, I did not.

Q. You did not?

A. No.

Q. Would it make any difference in your estimation if you did know?

A. Of profit?

Q. Yes, well anything?

A. Cost of operation, etc.?

Q. Yes, sir.

Testimony of L. K. Armstrong.

A. If I did know?

Q. Yes?

A. Not in that particular operation.

Q. All right, we will say that it went down 25 feet. That would not make any difference, would it?

A. The bank?

Q. It would not make any difference in your system of operation, I understood you to say what the depth was there, if that would be the theory, I am calling it 25 feet, is that satisfactory?

A. At that point—

Q. Then now we have attempted to clear up here, in an imaginary way, and a plain having been knocked off or scraped down to the level, leaving the plain inclined up, it inclines up, does it?

A. Yes, sir.

Q. Now, after you have got that planed off to the edge of—after that plain is washed off extending to the limits of the claim, then what would you do next?

A. To the limit of what?

Q. The limit of the claim, after you have swept the claim off?

A. Change my operations to another point.

Q. Where would you change it to next?

A. To be determined entirely on conditions, propositions which might develop by that other operation.

Q. What are the facts that you would look upon as being decisive or a criterion?

A. I might decide—I might be decided by the discovery of bedrock.

Testimony of L. K. Armstrong.

Q. Would you expect to find bedrock in that operation as above pictured?

A. I might find it.

Q. Well, it would have gotten up there within the 25 feet, wouldn't it?

A. We started at 25 feet and we are now going back into the hill.

Q. Well, when you arrived there, you are unable to say, I take it, from your present knowledge of the claim, what you would do next, is that right?

A. I am, yes sir.

Q. You would simply change your base of operation—what would become of the stuff that you knocked off?

A. From the hill, you mean?

Q. Yes, sir?

A. In the Columbia river.

Q. How would it go off?

A. Through sluices.

Q. That is, a sluice is a box through which water runs?

A. Yes, sir.

Q. What is the size of the boxes?

A. Depends entirely on circumstances.

Q. What do you think is the proper size on these claims?

A. On this property?

Q. Yes?

A. Depends entirely on the equipment how big the sluice boxes I would use—sufficient water to pass

Testimony of L. K. Armstrong.

through, sufficient to cover the debris as it passes through, and the boulders, sluices I would say.

Q. And it would spout over into the river at the bottom would it, is that the way it goes over?

A. It would go into the river.

Q. What would happen to the fine particles of gold that are more or less blown about by the force of the water.

A. They would settle.

Q. Settle in the sluice boxes at the bottom of the gravel?

A. Yes, sir.

Q. Well, this large mass of water down there all goes over the sluice box does it?

A. Pretty much all of it, yes.

Q. Do you know what the usual waste is in hydraulic mining?

A. Don't exceed 5 per cent.

Q. That has been your experience has it?

A. That has been my experience,—sometimes much less.

Q. Never more?

A. If it did it would be a waste.

Q. It could not be any more?

A. Should not be any more.

Q. Well, you have a series of sluice boxes in connection with the face of the drift that you are cutting against, I believe you call that a drift, you know what I mean?

A. Yes, along the face,—it is below it.

Testimony of L. K. Armstrong.

Q. It is below?

A. Yes.

Q. Well, does all the dirt that falls fall in the sluice boxes?

A. It doesn't fall in, it goes through it.

Q. How does it get in the sluice boxes?

A. The water carries it there.

Q. Well, you have got to use—I have forgotten what you said it was—that term—that means that you cut in the bank at the bottom so that it will undermine it, and it will fall down, that that right?

A. Yes, sir.

Q. Where does it fall?

A. Falls in the raceway.

Q. What is the raceway?

A. It is the area of ground above the sluice boxes that has been washed over.

Q. Well then does it go through the raceway into the sluice boxes?

A. It does.

Q. Is the sluice box at the end of the raceway?

A. I don't know what you term the end.

Q. Well, has it an end?

A. It has an outside limit.

Q. What is the size of the raceway?

A. Depends entirely on the conditions and circumstances.

Q. I mean the raceway you would use on these claims—what would be its dimensions?

A. I don't know.

Testimony of L. K. Armstrong.

Q. Haven't figured on that?

A. No, depends on the height of the bank.

Q. You might find conditions there that would alter your estimate, might you not, Mr. Armstrong?

A. Highly improbable.

Q. Let's go back. We wash a streak clean, a space clean, a space up above, up to the north, inclined up to the north, inclined north up the bar, about how much of an incline on that particular work that we are hydraulicking?

A. That would be governed entirely by circumstances, Mr. Avery. I cannot tell the grade of the sluice boxes, I should be governed entirely by conditions there, which might vary, things to vary the sluice boxes.

Q. How would you then work—much of the dirt, much of the fine particles of gold would go down on the gravel plain that we have worked out, wouldn't it?

A. You are going to take care of part of the gold.

Q. How would you do it?

A. Two ways.

Q. Which way would you do it here?

A. I should make, in the first place, my raceway very short and small, that is one way.

Q. Why would you do that?

A. In order that the gold would not travel around over the territory before arriving at the sluice boxes.

Q. How long would you think it should be made?

A. Which, the raceway?

Q. Yes?

Testimony of L. K. Armstrong.

A. Oh, I could not tell you exactly, it would be governed entirely by local conditions.

Q. What?

A. If I am cutting 100 feet deep you would have to have the raceway much longer than you would for twenty-five feet deep—at different points of depth and varying elevations, you cannot tell.

Q. It all has something to do with the question of economical work there doesn't it?

A. To a man that understands his business the cost don't vary. It is just a matter of knowing, that is all.

Q. Don't experts generally spend more of an effort in examining a claim than you did this one before giving an opinion as to its possibilities for hydraulic mining?

A. In some cases they spend less. I could cite one.

Q. Now how would you secure this 25 feet of gravel that we were on top of. You cut another area as I understand it?

A. You cut another area—my understanding was that in the previous question the 25 feet of gravel had reference only to the gravel in the face that I was telling you about,—it was not how much gravel was exposed beyond.

Q. Let us take it, then, as illustrating,—you said it didn't make any difference, the depth of bedrock—as illustrative we take the depth or supposed depth of 25 feet along the place where we were working or below the place where we were working?

Testimony of L. K. Armstrong.

A. I don't know that we assumed that. I did not so understand it.

Q. Well, how would you get that off—how would you secure it or the gold in it?

A. The lower part?

Q. Yes, below it?

A. If I operated as we have suggested, which I might not do, I should start in as before and cut it down.

Q. Where would you cut from then?

A. Cut from a point on the river, at the Nespeelm down in this point (indicating) approximately there.

Q. Down near corners four and five of the Peabody?

A. In that vicinity.

Q. Then you would have coarser) gravel wouldn't you to the East of it?

A. I might have.

Q. And you would take off that 25 feet of ground in the same way that you took off the first?

A. Practically the same way.

Q. What did you say?

A. Practically the same way.

Q. How far back would you go with it?

A. I should—

Q. To the end of the claim?

A. I should have to modify my statement there by stating that I had no idea that the gravel is any coarser at that point than it was higher up.

Q. Gravel grows coarser as it goes down, doesn't it?

A. Depends entirely on circumstances.

Q. Is that not unusual?

Testimony of L. K. Armstrong.

Mr. BLAIR: I object to that as immaterial.

A. In as much as gravel is not laid down at the same time it might or might not be a fact.

Q. Then you say it is not so?

A. I didn't say so.

Q. Didn't say so?

A. I said in as much as the gravel is not laid down at the same time the gravel in the last 25 feet may have no relation whatever to the upper layer of gravel that we have washed.

Q. Then you are not saying whether gravel usually gets coarser as it goes down?

A. No, in as much as it might or might not.

Q. Well, Mr. Armstrong, do I understand you to say you would go through the same process back up to the bank, up to the northern part of the claim again?

A. I didn't say so, Mr. Avery. In fact, I wish to object as I didn't say I would go through this same operation and I wish to object to it.

Q. How far do you want to be carried up—to the top of the claim?

A. I would be governed entirely by circumstances on the ground. The method of operation is one which no man can tell until he is there and sees the character of the gravel and the way you would move the gravel is governed by the way you would handle it with water. I would outline a plan as I went along that would be adapted to my process, but my figures have been amply high in the estimation of cost.

Q. Do you say it makes any difference whether you

Testimony of L. K. Armstrong.

are cutting way up to the top of the claim or part of the way or whether you are on bedrock or not?

A. Decidedly it makes a difference in operation whether I am on bedrock or not.

Q. Yes?

A. I could probably reduce that figure a little if I was on bedrock.

Q. If there was gravel still existing above bedrock you would still think it would be a profitable method of mining?

A. Most decidedly so.

Q. Has your mining been largely or to any degree above bedrock?

A. I have mined above bedrock.

Q. Has it been largely or to any considerable degree above bedrock?

A. I have operated several seasons above bedrock.

Q. How many seasons?

A. At least three.

Q. How many years have you been hydraulic mining?

A. Hydraulic mining?

Q. You have stated once but I have forgotten what is it?

A. I will approximate it about ten.

Q. Where did you work this claim above bedrock?

A. On the Swauk,—that is one place.

Q. Where is the other place?

A. We worked some part of the ground in Southern Oregon, part of it above bedrock.

Q. How much above bedrock?

Testimony of L. K. Armstrong.

A. Oh, several feet—20.

Q. What kind of bedrock was it?

A. Bedrock there—there was some granite.

Q. Now, Mr. Armstrong, take this supposition of commencing down here—I think you started to tell how you would get the water to that point near corner four of the Wickman?

A. How I should get it there?

Q. Yes,—by steel pipe?

A. Yes.

Q. I assume you put it there by pipe?

A. You would have a waste pipe or carry it down in an open ditch—this ditch here.

Q. Do you mean by that that you would carry it along the North line of the claim and around north of the point of operation?

A. Practically.

Q. How would you take it from there to the giant?

A. By steel pipe.

Q. Steel pipe?

A. Yes, sir.

Q. Then this steel pipe was to go to the giant from that point?

A. Yes, you understand this is a high-line ditch.

Q. What do you mean?

A. It is a high-line ditch to take the water from the dam, on this level shown on this photograph here is a high-line ditch level.

Q. You are referring now to exhibit "I"?

A. Yes sir. I would carry that around the bluff.

Testimony of L. K. Armstrong.

Q. Can you indicate approximately on exhibit 4 where this ditch would be, reaching around the bluff?

A. I suppose about 6,000 feet from the point of intake.

Q. Do you mean it would be practically along the north line of the claim?

A. Above that.

Q. Above the claim, would it?

A. Yes, above it.

Q. It would be outside the limits of the claim?

A. Oh, yes.

Q. Did you say something about using the waste water?

A. Yes, sir.

Q. That ditch then you would use for waste water?

A. Yes, that ditch.

Q. Now will you explain, Mr. Armstrong, how you do that, how you use that ditch for waste water?

A. Why, connect it at points where not connected with the flume and such water as I do not want for placer operations I should put into the waste water ditch and take it around to a point where I could use it for running into the sluices.

Q. Then you do not depend entirely upon the steel pipe water for the water that goes through the sluices?

A. No.

Q. Now, Mr. Armstrong, we had quite a little discussion about the amount of material north of corner 4 of the Wickman. Now in the operation of this mine

Testimony of L. K. Armstrong.

as you contemplated when you made your estimate where would you put your giant or machine?

A. I should be governed by conditions entirely.

Q. Entirely?

A. Yes sir—that would develop and had already developed.

Q. That would develop and which are already developed?

A. Which might develop and which are already developed.

Q. Which are those that are already developed?

A. Those that are already developed would be conditions which would permit of the best disposal of the tailings and the shortest length of pipe.

Q. What are those conditions which are not developed now?

A. They would be the conditions of bedrock or stratification or other things perhaps.

Q. Well now you have named bedrock and stratification. In what respect would bedrock or stratification influence you in mining the claim by hydraulic process?

A. Bedrock would depend entirely on its occurrence.

Q. What do you mean by occurrence?

A. I said occurrence.

Q. You spoke about stratification?

A. As to stratification,—I mean by that that it would depend partially—possibly—on the character of the gravel in the bank below it.

Q. This stratification—is that an important element in the consideration of this question?

Testimony of L. K. Armstrong.

A. It might reduce the cost of operation.

Q. Might it increase the cost of operation?

A. Possibly, not probably.

Q. Would the bedrock increase the cost of operation it?

A. It would not increase it?

Q. Wherein would stratification influence the cost?

A. There is a possibility of the gravel being uniform all the way up and down.

Q. In what respect does uniformity of gravel influence the cost?

A. Oh, there is some influence on it—it has some influence.

Q. In a great degree?

A. Depends entirely on circumstances. I don't imagine that the ground would be influenced as to cost materially by what might be uncovered except as to bedrock.

Q. All right now, we will cancel stratification?

A. All right.

Q. Wherein does bedrock influence the cost of production?

A. It might reduce it. I will not say that it would.

Q. It might reduce it?

A. It might.

Q. In what respect would it reduce it—how would it affect it?

A. It might lay at an angle or it might be of a character that we could have more sluiceway—sluiceways.

Q. Wherein does angle affect it?

A. That would be the pitch.

Testimony of L. K. Armstrong.

Q. The pitch—I understood you to say angle, so I said angle?

A. Well, if it pitched directly to the work it would reduce the cost materially?

Q. Why?

A. Because it would facilitate the movement of the gravel.

Q. Then would it make a great deal of difference between the conditions if you did not find any bedrock and as if you found bedrock as you have last described?

A. If I should find it as last described it might reduce the cost somewhat, probably would reduce the cost somewhat.

Q. Somewhat?

A. Yes, sir.

Q. Is that a material feature in the operation?

A. No, not material. I have not based my estimate upon finding bedrock.

Q. Then we can cancel bedrock—cancel that from what you said?

A. All right, let's do.

Q. Well now assuming that you know what you do know now in connection with the claims from observation, with your known facilities for dumping, etc., where would you next commence to operate?

A. With what I do know now, you mean?

Q. Yes, sir?

A. Well as I say it would depend on the area that we would have removed—will depend upon the area that

Testimony of L. K. Armstrong.

we remove, upon that would depend the future operations and the point of future operations.

Q. The only things that you did not know were stratification and bedrock and we have practically disposed of them and I thought now we could find out about how you would next commence to work?

A. I could work all these places on the claims.

Q. Where would you next set your giant?

A. There is no answering the question you ask. I cannot answer it until I get on and clear off, just exactly.

Q. Can you tell approximately,—I don't mean within a yard?

A. I cannot tell where I should set the giant at all until I see the ground. I might want to take the water out of another point and might not. It would depend entirely on where we would operate the giant.

Q. I thought there was nothing but stratification and bedrock that would influence your decision as to that?

A. As to where I should operate?

Q. Then you don't know how you would commence to knock off the rest of the dirt, is that right?

A. No, I do not, of course, know just exactly at what point I should start.

Q. You have not figured on the amount of dirt you would have to remove, have you?

A. From what point?

Q. From the whole claim, all that was workable as placer?

A. There are several years operation there with all the water that is available. That is sufficient.

Testimony of L. K. Armstrong.

Q. But you don't know how much it is in cubic yards?

A. Well, I could not arrive at an estimate,—I have not estimated it. A good many million cubic yards.

Q. How could you estimate it when you don't know where bedrock is?

A. I am estimating everything above the river.

Q. Estimating above the river?

A. I am estimating above the river at that side and an equal depth on the other side.

Q. How far up in the panhandle does your estimate include?

A. At a point where the Peabody makes a turn above the cabin.

Q. Well, by looking at exhibit 4 can you tell?

A. I think likely along there I should say (indicating).

Q. Now you have put your finger on there immediately on their immediately under the "h" in the words "Improvement 3 ditch" on the Peabody?

A. Approximately at that point.

Q. And the rest of the panhandle is not workable I assume as a mine, is it?

A. As placer?

Q. I meant to say that?

A. I will confess to not knowing.

Q. You made no examination of that?

A. Never with a view of working it as placer, that is for gold.

At this point the hearing was adjourned until 10 o'clock A. M. July 23rd, 1909.

Spokane, Wash., July 23rd, 1909. 10 o'clock A. M.

Testimony of L. K. Armstrong.

Hearing continued pursuant to adjournment. All parties being present.

L. K. ARMSTRONG, recalled for further examination.

CROSS EXAMINATION, Cont'd.

By Mr. AVERY:

Q. You say that you use giants at the end of this steel pipe?

A. We do.

Q. Well a giant is really an abbreviation of a former name giant nozzle, isn't it—an abbreviation of a former name—isn't a giant simply a large nozzle?

A. Well, a nozzle, Mr. Avery, is only a part of a giant—might consider it so perhaps. However, in hydraulic engineering and mining a nozzle is a distinct part of a giant.

Q. What is the nozzle of a giant?

A. The nozzle is the machinery at the point of ejection.

Q. The machinery?

A. The appliance, we will call it.

Q. State the nature or describe the appliance or machinery at the point of ejection?

A. It is a circular—a tubular metal having a circular orifice inside.

Q. It is just a hole, isn't it?

A. A hole is a hole, but this to cover the hole.

Q. What?

A. It is the metal which surrounds the hole, as you call it.

Q. Then is it any different in its general characteris-

Testimony of L. K. Armstrong.

ties from the nozzle that we use to sprinkle lawns—in its general characteristics and features?

A. Broadly you may say similar.

Q. Now what is a giant?

A. The part to which the nozzle is held.

Q. Will you describe that?

A. It is attached to the end of the pipe and serves as a controller of the water—a controller and a reducer—controller of the water and reducer, I might call it, of the superficial area.

Q. Well then in its general characteristics and features it is not very much different from the part, the brass part that is back of the nozzle of a hose for lawn watering, is it?

A. Broadly—

(Question read).

A. The purpose it answers is the same practically, that is, to reduce the diameter of the pipe and give it greater force, to give the water greater force.

Q. In other words the giant reduces the size of the stream and consequently increases the force from the in the pipe to that in the aperture where it is ejected, just the same as in a lawn sprinkler?

A. Yes, sir.

Q. And do you not recall that the original name of the nozzle as a whole as distinguished from the aperture that last feels the water, was a giant nozzle?

A. The original name?

Q. Yes, sir.

A. The name first originated in different forms, that

Testimony of L. K. Armstrong.

is, the names have originated by different manufacturers at different times and different places and the generally accepted name for the machinery and appliance which I have attempted to describe roughly, is a giant.

Q. You don't know that they were formerly called giant nozzles, and they just dropped the "nozzle"?

A. I don't know that they were then called "giant" at all. Might have been called something else.

Q. But what you don't know?

A. It is simply a term which manufacturers have used, the generally accepted name of the machinery and appliance which I have attempted to describe is at the present time "a giant," and has been for some years.

Q. But you don't know what it was called prior to that?

A. It was called half a dozen different names by different manufacturers.

Q. What were they, do you know?

A. I will have to call to mind—it might have been called a half a dozen different names, different names used by different manufacturers, a name by which they could identify those of their manufacture from others, one of them was a monitor.

Q. Anyway you cannot recall?

A. Oh, I don't recall just this instant.—I know there were other names.

Q. Now in speaking of the cost of perfecting this hydraulicking plant up there, one of the items you mentioned was a flume around the foot of the hill 6,000 feet

Testimony of L. K. Armstrong.

to carry 3,000 to 5,000 inches of water. Now at how much did you figure that?

A. Around the face of the hill,—not along the foot.

Q. I have it down here foot. Don't you think you said foot possibly, or the face—it is immaterial, but I think you said foot, but if you say front, why it is the same thing?

A. I meant if I said foot, I meant front.

Q. That is what the word would suggest to myself. Now how much did you estimate that would cost?

A. The flume?

Q. Yes, sir?

A. I did, I estimated the cost, I think.

Q. Well don't you know what you estimated the cost to be?

A. No, but I can tell you roughly. Including material, the building of the trestle, labor,—I don't recall the estimate, but I will make a statement as to the estimate.

Q. Well, did you make an estimate?

A. Did I make an estimate?

Q. Yes?

A. I certainly made an estimate—possibly made an estimate.

Q. But you don't recall now what it was?

A. In part—I don't recall any specific part of it. I recall the whole as I worked it out, the whole of it. That was something in excess of \$50,000.00. I don't believe I would care to commit myself on that just now because I would have to get my old figures if I

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did. I will make this statement, that my statement as to cost, my figuring on the cost and the statement based on it was based on each separate item and figured out.

Q. Well, then, I will ask you how much it would cost to put the flume around the foot of the hill, 6,000 feet, to carry 3,000 to 5,000 inches of water?

A. Front of the hill, you mean?

Q. Front of the hill, yes?

A. It would form a considerable part of the total figures gives in the estimate here.

Q. How great a part?

A. A considerable part.

Q. How great a part?

A. Not less than 40 per cent.

Q. That is the flume, isn't it?

A. That is the flume around the face of the hill, not the foot of the hill as you stated.

Q. Around the front of the hill?

A. Around the front of the hill.

Q. How much did you figure that flume to be?

A. Depends on the grade. My figures were probably low. Probably that would have to be raised if we should change the grade. It depends on the amount of water we should want to put through.

Q. What grade did you figure on?

A. Two or three figures, either one of which might have to be changed—four feet by six, you could do it with 70 feet of lumber a lineal foot, that is the basis I figured on for the flume, 70 feet of lumber for a lineal foot without figuring on the trestle at all.

Testimony of L. K. Armstrong.

Q. Did you say something about bridge work in connection with that?

A. I did.

Q. What is that, you mean the trestle, I suppose?

A. Yes, sir.

Q. How much would the trestle and the bridge work cost?

A. I didn't figure. That is not in my estimate except in a rough way. I figured that the bridge work and the trestles would cost at least 25 per cent of the cost of the flume, meaning outside of the cost.

Q. Well, didn't you figure on the bridge work and the trestles in your estimate of \$50,000.00?

A. No, it would go over that with it.

Q. You didn't mean to include that in your estimate then?

A. My figures were low, as a matter of fact, for that, I am quite well satisfied, not sufficient.

Q. Well, your statement as I understood it included the flume, if I am mistaken I just want to correct myself, that is all?

A. I do.

Q. You didn't include it?

A. I did include it in this way that I have just stated. I included the whole cost then,—I am not certain it would take to build the flume what I stated,—\$50,000.00.

Q. Then \$50,000.00 was not necessarily an accurate estimate?

A. Not at all. I estimated that as the minimum.

Testimony of L. K. Armstrong.

Q. How much did you estimate the pressure boxes at suitable points would cost?

A. Pressure boxes don't carry very much lumber. The question of suitable points would be determined as I stated yesterday in the delivery of the water, which would be at intervals along the front of the hill.

Q. Weren't they included in the estimate?

A. Yes, sir.

Q. How many pressure boxes would there be?

A. Oh, not to exceed six.

Q. What are they for, Mr. Armstrong?

A. Simply to accumulate a uniform—enough water to make a uniform pressure,—don't need to be large—to exclude the sand,—or sand boxes I should advise for excluding the sand from the pipe.

Q. How much do you figure the construction of a ditch at the lower level which with the flume to convey placer water or sluicing water—?

A. The construction of a ditch?

Q. How much did you figure the ditch?

A. This is practically the figure. I didn't figure any cost whatever in completing the ditch on there, the completion of it, the intervals between, by the erection of a flume.

Q. That was included?

A. That was included, yes sir.

Q. How much did you figure it would cost to complete the ditch?

A. I didn't figure on it separate at all as I stated. I did figure it separately but not the total. I have for-

Testimony of L. K. Armstrong.

gotten what I made that including the lumber and cost of labor. The cost of labor would be about 60 per cent I suppose of the cost and the lumber would cost \$10 per M.,—not less than \$5.00.

Q. Are you able to say at this time how much you estimated the completion of the ditch to be?

A. Under a separate item?

Q. Yes, sir.

A. I am not.

Q. What do you mean to include by the expression, in substance, "with equipment consisting of pipes," I think I have it, I may be wrong about that—is that right, Mr. Armstrong?

A. You are figuring on the lumber bill are you now?

Q. I have it down in addition, you said "for equipment." What equipment did you refer to?

A. I referred to the equipment of the placers by—pipe would be included.

Q. Well, was that included in the cost of the flume?

A. Yes, included in the total cost.

Q. Well, just tell me the different items which you referred to as equipment?

A. The pipe and giant and standpipe.

Q. The equipment was the giant?

A. I didn't say—but the pipe is a giant—the pipe and giant—the standpipe and air escape and flumes or sluices I would say—sluices.

Q. Anything else that you recall?

A. As equipment?

Q. Yes?

Testimony of L. K. Armstrong.

A. Well, there would be the material that would go with the sluices.

Q. You mean by that the wood part?

A. Yes, wooden material and the different riffles.

Q. And what pipe did you refer to when you commenced the list—the steel pipe?

A. Yes, on the steel pipe.

Q. How much did you figure that would cost?

A. That would depend—the cost would be about \$2.50 to \$4.00 per foot delivered on the ground and put in place.

Q. \$2.50 to \$4.00?

A. Yes, a foot.

Q. How much did you figure the total of that?

A. The pipe?

Q. Yes, sir.

A. I don't recall the exact figure on that.

Q. Did you figure that you would have \$2.50 or \$4.00 pipe?

A. Well, I figured I would have both—the price of pipe varies from \$2.50 up to a very high price. You cannot tell about what price the pipe is going to be until you get it, so I figured what I would consider safe.

Q. How many feet of pipe would it take?

A. Take more than a thousand feet—probably three thousand—possibly more.

Q. Did you figure on one, two or three thousand feet?

A. I don't recall exactly what I figured on, but I considered I figured on three thousand feet, possibly more, as I stated.

Testimony of L. K. Armstrong.

Q. You don't know how much then you did estimate that would cost in this plant?

A. You could put the minimum length of pipe at 3,000 feet and the absolute cost about \$2.50 a foot—above that.

Q. The minimum pipe 3,000 feet and the cost, the minimum cost at \$2.50?

A. I said above \$2.50.

Q. Well the minimum cost a foot was above \$2.50?

A. I didn't exactly put it that way.

Q. When you said gates in making this estimate, what gates did you refer to Mr. Armstrong?

A. There would be a gate at any "Y" that might be made—there would be a gate.

Q. Would that be any expense?

A. Oh, yes.

Q. How much would that be?

A. I should estimate those at not less than \$150 apiece.

Q. And how many?

A. Not less than two.

Q. And standpipe, how much would that cost, and how many are there of them?

A. Well, there would be one at least.

Q. How much?

A. Cost above \$300.00.

Q. How much?

A. I will make that at \$300.00.

Q. How much does a giant cost?

Testimony of L. K. Armstrong.

A. I don't believe I figured on a giant separately. I have forgotten now just what they do cost.

Q. How many of those would you have?

A. Not less than two.

Q. You don't know the cost?

A. I have forgotten now. I have been told that several times but it has slipped my memory.

Q. Do you happen to know approximately what they cost?

A. I would not want to say just now.

Q. Now do you know what the air escapes would cost?

A. Why the air escapes we want could be put in at a cost of \$25.00 apiece.

Q. And how many?

A. Not less than two or three—say five.

Q. And sluices, how much would they cost?

A. In excess of a thousand dollars.

Q. How many would that be?

A. Well, that I figured—I figured that I could use up to 30 or 40.

Q. That is, are they lineal running one after the other, or in different places?

A. Well in conducting it they might be run double and they might be run singly and might be run as separates. There is a great waste of lumber in the construction of that sort of thing.

Q. What size would the boxes be, Mr. Armstrong?

A. That would depend entirely on how they were laid. I would figure the cost per lineal foot for flumes

Testimony of L. K. Armstrong.

—I would say sluices, for sluiceways, equal per lineal foot, that is 70 feet, to the flumes.

Q. I don't know as I understand you and I wish you would enlighten me a little more. How many feet, lineal feet of sluice boxes do you think there would be in this number of 30 or 40?

A. They would be about 12 feet long apiece.

Q. Now how much did you figure the lighting plant would cost?

A. That would be auxiliary and of course the saw mill and whatever purpose the power might be put to, that I am figuring on—I have forgotten. I figured it out by different exact items.

Q. You have forgotten what the lighting plant would cost?

A. I have forgotten just what it would cost. I should say it would cost—I should make an estimate—make an estimate on a lighting plant that would cost \$500.00.

Q. Why did you mention a lighting plant. What was the purpose of the lighting plant?

A. Why, for night work.

Q. The object of the lighting plant is to throw light on the place where you are working the giant?

A. Yes, sir.

Q. The light is directed by search light or by means of incandescent lights?

A. Run both ways—open arc lights are very frequently used.

Q. Did you use open arc lights down on Swauk mountain?

Testimony of L. K. Armstrong.

A. I used a headlight—a locomotive headlight and also open fires.

Q. Open fires?

A. Open fires, yes—both ways. I have used them on the ground.

Q. The locomotive headlight would be filled with oil?

A. Yes, sir.

Q. What did you use down in Oregon—what did you use there?

A. In the Oregon diggings we used a locomotive headlight there and we had also reflector lanterns at that place.

Q. Are there any hydraulic diggings up in the Nespelem country?

A. I regard this—the Nespelem country is a pretty broad question. If you mean directly at that point—it is the only property that I went to examine. I have no knowledge, no personal knowledge of any other hydraulic propositions at that point.

Q. Well, how far do you consider the Nespelem country runs? Don't you have any opinion as to that?

A. Yes, I have got an idea about the Nespelem country.

Q. According to your idea is there any other hydraulic diggings in the Nespelem country proper?

A. No, I generally regarded the opposite side of the river and near—below the gulch which I have shown on this map exhibit “T” to the West,—I refer only to the North side—the North side of the Columbia river, on

Testimony of L. K. Armstrong.

the Reservation side of the Columbia river and in behind, above the gulch to the West of the Wickman.

Q. Where is the nearest hydraulicking plant to these placers?

A. I don't know.

Q. Where is the nearest one that you know of?

A. I don't know of any in the immediate vicinity.

Q. Where is the nearest one that you know of?

A. I have knowledge through the Treasury Department, the Mint Bureau of the Treasury Department as to the operations and production of gold along the Columbia.

Mr. AVERY: I object, and move to strike the answer.

A. My knowledge is based upon official reports.

Q. I have not asked what your knowledge was. I asked another question.

(Question read).

A. A knowledge may be acquired by personal investigation or by official report. Official reports from the Mint Bureau are to the effect that hydraulicking operations—

Mr. AVERY: I object. I just want to know, if you know, the nearest hydraulicking plant of which you have knowledge. I mean when I say "nearest", nearest to these placer claims?

A. I would like a little more accurate definition of my own knowledge, whether I must consider—whether from a personal examination or from official report?

Q. Well, all right—either one—I will put it this way,

Testimony of L. K. Armstrong.

—which is the nearest one to these claims that you know of personally?

A. Personally I do not know of any hydraulicking operations on the Columbia river at this time South of the boundary line.

Q. Well, now, do you mean by that to answer my question that you do not know of anything any nearer than those in British Columbia?

A. I answered that I don't know of any south of the British Columbia line.

Q. Well, that is what you mean?

A. Personally—I have no personal knowledge.

Q. Now let's get an answer to the question. Where is the nearest plant that you of your own personal knowledge know of the existence of?

A. Do you mean hydraulic plant?

Q. That is what I mean?

A. You mean any claim?

Q. I mean anywheres in any direction from these claims?

Mr. BLAIR: I object to the question as immaterial.

A. Do you ask for personal knowledge or a combination of personal and official?

Mr. AVERY: I am not going to repeat the question.

Mr. BLAIR: You rather divided it.

Mr. AVERY: I still adhere to the last question when I said I want to find out what you personally know of.

A. I have no knowledge—you want to know how far—was that the question?

Q. How far and where it is?

Testimony of L. K. Armstrong.

A. I cannot answer the question.

Q. In figuring on the estimated cost of the electric light plant, would that plant be used for any other purpose?

A. Electric plant?

Q. Could it be?

A. It could—should.

Q. Which?

A. Should have it for other purposes, sawing lumber.

Q. And giving energy—distributing energy and power to outside points?

A. I have no knowledge of any such a thing,—purely speculative.

Q. Would such a plant be able to do that?

A. I think not—and operate the placer.

Q. You mean by that it would take all of the energy that your plant would develop and use there for the purpose of successfully working the placer?

A. Energy—in lighting.

Q. Is that right?

A. Yes, if you consider the operation of a saw mill as touching that.

Q. Now for the purpose of successfully working it and extending it in the manner that you have generally outlined it would practically take all the water that was running there, wouldn't it?

A. It would.

Q. So that it could not be used for any other purposes of distribution?

Testimony of L. K. Armstrong.

A. I do not see where there would be water to do with.

Q. Have you any idea how long it would take the plant you have outlined to work up this ground?

A. I don't know—I didn't figure on the time at all. It is a matter of figures. I figured on several years. I would be safe in giving it ten.

Q. Something over ten years?

A. Over ten years.

Q. Might be as much as twice that much?

A. I would not care to say. I based my estimate above ten years and twice that is double.

Q. That is—?

A. I would not care to commit it to that statement.

Q. Would you be willing to say that it would not take twice that length of time running successfully in a reasonable way with the plant that you have outlined?

A. I would not want to be quoted as saying that it would not.

Q. That means, of course, I suppose, it might take that much time, would it—is that right?

A. I have made my answer.

Q. You don't want to answer my last question then?

A. I have answered it.

Q. Have you included a saw mill in estimating?

A. I think not.

Q. It is included in your \$50,000.00 estimate?

A. Yes, sir.

Testimony of L. K. Armstrong.

Q. It kind of seems to me that you said so. I confess I have forgotten?

A. The estimate which was in excess of \$50,000.00 I think included it.

Q. How much would the saw mill cost?

A. That would be a hard thing to estimate, but I should say \$2,500, installed.

Q. I take it from your general observations that this plant that you are suggesting to be put up there, and working now in a reasonable and prudent manner—I suppose that it should be worked continuously?

A. Yes, sir.

Q. That is, continuously?

A. Yes, sir.

Q. Suppose that the operations will commence when they do commence and continue indefinitely?

A. Yes, sir.

Q. And by continuously I mean not at intervals, but day after day and season after season?

A. Day after day and season after season.

Q. It would be, I suppose—if I am wrong correct me—more or less expensive to shut down a plant of that kind and size and commence again?

A. I would not do it.

Q. That would not be a prudent way to do?

A. No—that is a very good word—it would not be a prudent way to do.

Q. Now when you mention the buildings and tools and shops, etc., what buildings do you mean other than the saw mill?

Testimony of L. K. Armstrong.

A. Generally, the buildings about a mine.

Q. What?

A. The general buildings about a mine.

Q. How many would there be ordinarily?

A. I would say half a dozen buildings,—might be more.

Q. And about how much did you estimate their cost?

A. It would be difficult to estimate the cost of the buildings very accurately. You might put them up for about five to eight hundred dollars apiece, including material and labor.

Q. And shops, you mentioned the word “shops”,—what did that word mean?

A. That would be a blacksmith shop and repair shop.

Q. How much did you estimate that?

A. I included that in my estimate.

Q. Of buildings?

A. Buildings and shops,—I more particularly wanted to refer to the equipment of the shop and, rather as distinctive from the power house proposition,—buildings and shops,—

Q. You say you think it would cost to remove the dirt and material which would have to be removed to work this as a placer about 4 cents a yard?

A. About 4 cents a yard.

Q. In making the estimate how many yards did you estimate you would have to remove?

A. That might vary materially—it might vary from 4,000 to 10,000,—either one of them are possible on the property.

Testimony of L. K. Armstrong.

Q. From 4,000 yards to 10,000 yards?

A. Per day of 24 hours.

Q. Well, I refer, Mr. Armstrong, to the total amount that you contemplated you would remove?

A. In total you mean?

Q. Yes, sir?

A. I have already stated that there were several million yards to be removed in total.

Q. But you don't make any more definite estimation of the total amount to be removed?

A. I do not and for these reasons. Any minimum estimate that I might put it at would be profitable under the operation that I have in contemplation.

Q. Well, how much depreciation did you figure on the plant when you made your estimation?

A. Depreciation would probably be about 10%.

Q. Annually?

A. 10% annually.

Q. What did you say, Mr. Armstrong?

A. I didn't make specific figures on the depreciation. That is a matter which is pretty well worked out.

Q. How much did you figure as interest on the investment?

A. The interest on the investment might be figured at 8%.

Q. Per annum?

A. Per annum.

Q. How much did you figure that the gold would run per yard?

Testimony of L. K. Armstrong.

A. On the basis of the ground that I made the sampling on exclusively, I figured it at 12 cents.

Q. And that was based on what?

A. That was based on the evidence already in court of the probable number of pans to a cubic yard.

Q. Then in giving your testimony as to the estimate of 12 cents per cubic yard, that was based on the evidence that has been testified to in court by the other witnesses?

A. By the appellant.

Q. By the appellant?

Mr. BLAIR: Defendant you mean?

A. The evidence of one Mr. Collier.

Q. You based your estimate on his report?

A. I based my statement as to the 12 cents on his report, he has an estimate of the number of pans to the cubic yard of ground and put it at 150 pans.

Q. Where did you hear him state that, Mr. Armstrong?

A. It is in evidence in court.

Q. Where is it in court?

A. There.

Q. You have read his deposition?

A. I have.

Q. What is that?

A. I have.

Q. You mean that you saw that in his deposition?

A. Yes, sir.

Q. But as to the amount of the value of a cubic yard,

Testimony of L. K. Armstrong.

where did you take that from, from the evidence of that by either party, or the witnesses?

A. The value per cubic yard?

Q. Of dirt?

A. I took that from my own examination.

Q. How long did you examine the property—how long were you up there?

A. I was three days on the ground.

Q. And how many pans did you say you took?

A. Personally I took on the ground 12 pans. I should like to add to that if I am permitted—

Q. Well, you have a right to explain in answering.

A. In addition to which I superintended the panning of about 40 more pans. I say “about,” because a few pans were taken up past the limits of the claims.

Q. When you say you superintended the taking of 40 more pans you mean that you were present when somebody else panned them, is that right?

A. Personally I had them panned. It was under my supervision. I was not only present but I saw it done.

Q. And your estimate was based on the 52 pans that you have last described?

A. My estimate was based upon the 12 pans which I myself panned.

Q. And what fineness did you figure that the gold was in making your estimate?

A. How is that?

Q. On what fineness did you figure?

A. What degree of fineness?

Q. Did you consider the gold was?

Testimony of L. K. Armstrong.

A. I graded it with a value of \$19.50 per ounce. My figures were based on \$19.20.

Q. Your estimation then was based on that degree of gold—fineness of gold?

A. Yes, sir.

Mr. BLAIR: \$19.20?

A. My figures were on that conclusion. It was worth \$19.50.

Q. Can you tell by looking at the gold how fine it is?

A. I cannot.

Q. Approximately?

A. I cannot.

Q. You done most of your panning I believe you said on the Peabody, is that right?

A. Most of them, yes sir.

Q. What relative part?

A. Three-fourths of them exactly. I am speaking now of my own panning, the 12 pans.

Q. Well, speaking of that if you desire to confine it to that?

A. Yes, sir.

Q. You took three pans on th the Wickman?

A. Yes, sir.

Q. And the 40 pans which you superintended the panning of they were in what proportion taken from one or the other of the claims?

A. More largely from the Peabody.

Q. Do you remember of any number?

A. I do not recall the exact proportion.

Q. The proportion?

Testimony of L. K. Armstrong.

A. No.

Q. Does gold vary in fineness?

A. Certainly does.

Q. May not this gold be of different fineness in different parts, even, of the claims?

A. Yes sir,—varies very little apparently.

Q. You say apparently,—that is from your examination by the eye, is that your opinion?

A. I will make a little explanation there if necessary and it can go or not. There are two ways by which—there is a way by which one may determine the relative value of gold on the same property. The finer the gold is the more apt it is to be—the finer in size of particles the more apt it is to be finer and higher in grade. Therefore I should assume immediately that the gold which I found at a place without the limits of the placer was a secondary deposition, from the same deposition, was of a higher grade than the gold which I found on the property itself. Also that the gold which I found on the Wickman might be a shade higher in value than that found at other places where the gravel was coarser, particularly near the water.

Q. What is the lowest grade of gold that you have seen, I mean,—I don't know whether you would call it "raw" or not—I mean fresh gold in the sense of being new?

A. Based on official reports?

Q. No, I mean of your own observation—that you have personally examined?

Mr. BLAIR: That is generally, do you mean?

Testimony of L. K. Armstrong.

Q. No, I mean specifically, how low he has ever seen gold in fineness?

A. I had occasion to visit the assay office in Seattle and have seen a good deal of gold that came from Alaska, and the Yukon and excluding that, which I don't regard as having any value in this case, the lowest grade of gold I have personally—personally have knowledge of in this locality is found on the Swauk and runs a little better than \$15.00 per ounce in gold—between \$15.00 and \$16.00.

Q. Did you ever see any lower grade gold than that anywheres?

A. I never mined in lower grade gold.

Q. Did you ever see lower grade gold?

A. I said I was in the assay office at Seattle and I saw gold that by official test proved to run down to a little above \$13.00 I think if I recall it correctly.

Q. That looked just like the other gold, didn't it, or didn't you see it when it was new, before it was tested?

A. I don't recall that.

Q. There really is not very much difference in the appearance of gold in its native state, is there?

A. Oh, yes.

Q. That is, does the color of gold in its native state indicate its fineness?

A. Not necessarily.

Q. That is what I mean?

A. Yes sir. There is another method by which I should arrive at the approximate value of the gold up there per ounce which I think ought to be introduced.

Testimony of L. K. Armstrong.

Q. Do you know where the gold came from on these claims, Mr. Armstrong?

A. I was not there when it was deposited, if that is the question, but otherwise I have a pretty fair knowledge.

Q. Based on what?

A. Based on my knowledge of geology.

Q. Where do you consider the gold came from?

A. I consider that due to the topography of that country and the mineralization of the adjacent territory that the greater part of this gold came from the mineral belt lying to the North—northwesterly and northeasterly, because it is the most convenient, and that territory has a drainage and the drainage flows out over the end of these claims, evidently has flown across them,—whereas, more distant mineralized belts would carry the contents to a greater distance and owing to the peculiar topography I would say, would find it more difficult to deposit the gold on these claims. Am I lucid?

Q. You don't think that it came from the Columbia river then?

A. Well, the Columbia river evidently was a carrier. The Columbia river has no gold. The Columbia river is a carrier only. It has no gold.

Q. In your opinion then, did the Columbia river deposit this gold where it is?

A. In part—in part only.

Q. Well, in what part do you think it did?

A. I never figured relatively at all—even the deposition of the Columbia river as a carrier is more likely

Testimony of L. K. Armstrong.

to have come from the mineral belt that I have indicated than from any other source.

Q. Then I take it from your answer that the Columbia river did not store that gold in any substantial degree on these claims?

A. The Columbia river—you mean deposit it?

Q. Deposit it, yes sir?

A. The Columbia river acted as an agent.

Q. Do you mean to say in a substantial degree?

A. No doubt—no doubt.

Q. Well, the Columbia river do you mean to say was the agent by which it was transferred from the mineralized country that you refer to to the northwest?

A. Not the agent—from the northwest?

Q. Yes?

A. It was not.

Q. If it was brought down there from the northwestern mineralized belt?

A. Speaking of the northwest I mean this section up here (indicating) there, up this particular gulch which runs up into the mountains and I might say at least 4 or 5 miles and on both sides of it and at the head of it or the different heads of the branches there are quartz mines and part of which are now being worked along the deposit.

Q. What is the character of the gulch,—does water run in it?

A. It is dry, too, at present. The ground at this point (indicating) is higher than at that point (indicating), and the same is true of this point here (indi-

Testimony of L. K. Armstrong.

eating) being higher than that (indicating). Therefore, under the conditions, that much of the drainage of this country here went on to—much of the drainage to the west on exhibit “T”,—much of the gravel was deposited, and material, I will say, and more so, where I think was deposited from an erosive tendency, on the lower end of the Wickman, on the west end of the Wickman, by means of a gulch extending from the mineralized territory to the northwest down and uniting with the Columbia immediately to the west of the westerly end of the Wickman. That is one.

Q. Now in what way did the Columbia deposit any gold on the claims,—if it did deposit any material on them where did it come from?

A. From points along the mineralized belt particularly right—particularly easterly.

Q. Where was you figuring the Columbia run when that was done?

A. When all this was deposited?

Q. Yes, sir?

A. The Columbia run along practically the same as it would at present—does at present.

Q. In what degree larger than it is now?

A. The stream?

Q. Yes, sir?

A. The stream must have—having reference to the quantity of the water the stream must have occupied—along this particular section, a little different location, more to the north at a somewhat higher elevation and the gravel was deposited where it is after it was car-

Testimony of L. K. Armstrong.

ried by the stream and there is evidence of more shallow water even above the present water level, which I mention, to carry on my geological examination, in a sub-stratum of clay, which we have not touched upon, and which underlies much of the dirt to all appearances, and seen by me, nearer the southwesterly, not far from the southwesterly corner of the Wickman. Not far from the junction (I don't know what that would be called) the corner—not far from corner 4—southwesterly from corner 4 of the Wickman and along the southerly bench of the present Nespelem river. I might take up all the afternoon with this answer, I might talk all the afternoon on this, if necessary. I would like to go into an exhaustive talk on the subject of geology. I don't know whether the question has been answered or not. If there is anything I have forgotten I will think of it later.

Q. Now then, after looking at exhibit "F" after striking it with a pencil there I notice on top of the black sand some particles, you see them, do you not, Mr. Armstrong?

A. Yes, sir.

Q. That is what they call, some of it is coarse and some of it fine gold?

A. Yes sir. That is a relative term, Mr. Avery. I am referring exclusively to the claims when I say that.

Q. You say you panned along the Nespelem on both sides and found gold, and generally I believe you said it could be discerned without the aid of a magnifying glass?

A. Yes, sir.

Testimony of L. K. Armstrong.

Q. How small a particle of gold can a man of ordinarily good eyesight see in black sand such as we have in this bottle, exhibit "F"?

A. That is a pretty difficult question to answer. The very nature of the gold itself would preclude any answer that was within a reasonable limit. That gold might be very flat and thin or be perfectly round or otherwise, or anywhere between.

Q. Then it would depend upon whether it was flat or whether it was more cubical or solid or round?

A. It is a question that cannot be answered intelligently.

Q. You would take, for instance, the smallest color of gold that you can see with your naked eye,—about how many of them does it take to make a cent?

A. As I stated I would not care to answer the question.

Q. After an examination of the gold in the bottle exhibit "F" to the best of your ability, how many colors or how many particles of fine or coarse gold are there in there?

A. How many particles?

Q. Yes, sir?

A. I cannot tell. I have absolutely no knowledge.

Q. Have you no knowledge as to that—can you so manipulate this bottle as to bring the larger or the largest of them to the top?

A. I can.

Q. Well, attempt to do so, if you please, and I will

Testimony of L. K. Armstrong.

ask you how much in your opinion is the largest piece worth?

A. It would not be possible without removing this one from the bottle which is a very poor medium to look through to tell. I would not care to base any sort of an estimate upon it.

Q. You would not want to make any statement or estimate of the value of the largest of the particles that you discover in the bottle?

A. I would not.

Q. This bottle has a tendency to magnify, hasn't it?

A. I think not.

Q. Don't you think that that has a tendency to magnify?

A. No sir, I don't think so.

Mr. BLAIR: I will stipulate, Mr. Avery, that the cork be broken and the gold may be taken from it and that either counsel at the time of argument may take the gold from there.

Mr. AVERY: I will take that up when we argue it.

Mr. BLAIR: I think that would be the proper thing to do.

Q. Well, in making your estimate of 12 cents per cubic yard, didn't you estimate how many colors it would take to make a cent?

A. I did.

Q. What did you figure?

A. My figures—

Q. What did you estimate I should put it,—more correctly say?

Testimony of L. K. Armstrong.

A. I should figure exclusively on what I panned and I think I stated in my evidence before about what my basis of calculation was. I would not care to make any statement of it now.

Q. You don't remember independently then of what you then testified?

A. Not without some time.

Q. Not without what?

A. Some time.

Q. Now I will ask you, Mr. Armstrong, if a piece of gold is substantially globular, how many of them it would take to make a cent; with gold merely and just discernable with the naked eye?

A. I would not attempt to answer the question.

Q. Can I make it any clearer; that word globular indicates what I mean?

A. Spheroid.

Q. Spherical is rather better—you would not attempt to say?

A. I would not.

Q. Don't you think you could state it with reasonable accuracy?

A. Not with any degree of satisfaction.

Q. My last question was regarding the value of the piece of gold that I then described. I will now ask you if you can, referring to the description of the piece of gold that I have just given, if you can say how much it weighs?

A. I cannot.

Q. Or ordinarily should weigh?

Testimony of L. K. Armstrong.

A. I cannot.

Q. You didn't take any pictures of the bench land or plateaus on these claims, did you?

A. They are too badly broken, Mr. Avery, to get—in fact I will make a more specific statement. My apparatus as is evidenced from the views taken was too small to take comprehensive views.

Q. You don't—did you take any views of the plateaus or bench land on the two claims?

A. I took no comprehensive views as I recall. I think I have all of the exposures that I made excepting one or two that were defective. I think I shot two on the one plate and another one was only a view over a bluff and I have them all except those.

Q. Referring to defendant's exhibit "K"—how far from the mouth of the Nespelem was that picture taken. How many feet west approximately,—well, no,—east?

A. I don't know the approximate distance. I might arrive at it.

Q. On the map it is about a quarter or three-eighths of an inch is it, or half an inch from corner No. 6?

A. You might say half an inch east of corner 6 on the map, approximately.

Q. Have you been on these grounds before?

A. Never.

Q. I meant, of course, until last week?

A. Until my one visit.

Q. You have been up to the quartz mines before, haven't you?

A. No sir, I have not.

Testimony of L. K. Armstrong.

Q. Never went up into that country?

A. Never was in the district before.

Q. Never was up in the district before?

A. No sir. And I will tell you for your edification, I want to say I was in the district 8 days instead of three. I want to make that suggestion,—I don't know as it has any bearing on the case.

Q. I was asking you how many days you were down on the claims?

A. Yes, I was three days. I went to that extent and I will say I was in the district 8 days at this time.

Q. Where did you stop, that is sleep and eat?

A. I slept at the hotel.

Q. As Nespelem?

A. Yes, I did.

Q. Go down each day, did you?

A. Yes, sir.

Q. What time did you go down?

A. I went down two mornings, left the hotel at 8 o'clock.

Q. How long did it take you to go down?

A. I was approximately an hour—on horseback each time.

Q. Take the first day where did you lunch?

A. I lunched on the ground.

Q. Take your lunch with you?

A. Yes, sir.

Q. What time did you start back?

A. I started back near 6 I think it was,—a little after 6.

Testimony of L. K. Armstrong.

Q. You ate dinner, the night meal, at the Nespelem hotel?

A. Yes, sir.

Q. Was that your experience each of those days?

A. No, I left earlier the third day and returned home later also I think 'on the 3rd day. I don't recall.

Q. You left the hotel earlier that morning?

A. Left the hotel earlier, yes sir.

Q. And stayed longer at the grounds, spent more time there in other words?

A. As I recall it about an hour longer.

Q. Now did you consider, Mr. Armstrong, with the examination that you made of these claims, considering the time taken and what was done and bearing in mind that it is 260 acres in area or approximately that, do you think that in view of the amount of expense and cost of the installment of a plant and working it, of the value that you have stated, do you think that you have made such an examination as is warranted and such an examination as is sufficient to pass upon the value of this claim as a hydraulic diggings, I mean profitable hydraulic diggings?

A. I will have to be a little more verbose perhaps than I ought to in my answer. My knowledge of the property is not confined to my personal investigation. I have been consulting engineer for this company for some time and under my instructions, and independent of them, they have made numerous and various widely separated examinations of this property.

Testimony of L. K. Armstrong.

Mr. AVERY: I object to your stating what anyone else has said or done.

A. (Continued) Mr. Avery it is absolutely impossible—in addition to this I was accompanied by some of the very people who made these examinations and who are the people that showed me the ground carefully upon which an estimate had already been made by themselves and based upon this knowledge and my own examination I believe that the company would be justified in installing a hydraulic plant preliminary to a more thorough investigation of all the area, more especially that of the Wickman and back remotely from the stream. At my suggestion, and independent of it, it had been intended to sink holes in the ground and take samples in that manner. I think I have answered the question.

Mr. AVERY: I think you have answered everything else, at least.

At this point the hearing was adjourned until 2:00 P. M.

2:00 o'clock P. M., July 23, 1909.

Hearing continued pursuant to adjournment.

Mr. L. K. ARMSTRONG, recalled for further examination.

By Mr. AVERY:

Q. Now at least that is the only answer you can give, I assume, Mr. Armstrong?

A. I regard that as the most specific.

Mr. AVERY: That is all.

By Mr. BLAIR:

Testimony of L. K. Armstrong.

Q. How much stock do you hold in the company, Mr. Armstrong?

A. The books show 4,000 shares. I think that is all.

Mr. AVERY: I move to strike it out as not being responsive and hearsay and not the best evidence.

A. I will answer more directly, if required.

Q. Well, what is your answer?

A. 4,000 shares. I did not mean to be indirect in the first place.

Mr. BLAIR: That is all.

Witness excused.

THE EXAMINER:

The case is continued by consent of counsel subject to the call of the examiner. It is agreed that at the time of putting in the rebuttal evidence that the complainant may introduce another witness in its case in chief and that at that time the defendant may put in the report of Mr. A. J. Collier made to the government, to be subject, however, to all proper legal objections except as to the time of presenting it, and the defendant at that time, if it desires, may put in testimony as to the amount of horsepower in the Nespelem river on these claims.

Mr. AVERY:

It is further stipulated that the complainant has now offered in evidence the deposition of Arthur J. Collier taken in Washington, D. C. and that it is stipulated that it is as completely in evidence as if offered at the time of argument in this case or at any other period, subject to such legal objections as the defendant sees fit to make as to its competency.

Testimony of Howland Stevenson.

Mr. BLAIR: I assent to that.

Hearing adjourned sine die.

Spokane, Wash., Dec. 18, 1909.

10 o'clock A. M.

Hearing resumed pursuant to call of examiner.

Mr. A. G. Avery, U. S. Attorney.

Mr. John E. Blair, Attorney for Defense.

Mr. B. B. Adams, Examiner.

Mr. HOWLAND STEVENSON, a witness called on the part of the complainant, in rebuttal, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. AVERY:

Q. What is your name, Mr. Stevenson?

A. Howland VanNess, but I don't use the word VanNess very often.

Q. Where do you reside, Mr. Stevenson?

A. In Spokane.

Q. How long have you resided in Spokane?

A. Well the last time since I have lived here in Spokane I have been here permanently, resided for about six years.

Q. What is your occupation, Mr. Stevenson?

A. Mining.

Q. How long have you been mining?

A. I think it is, well, 30 or 31 years.

Q. Explain to the court what has been your experience, the character of experience you have had during that period?

A. Well, I have been superintendent of a great many

Testimony of Howland Stevenson.

mines. I have examined a great many mines for other people and I have been prospector. I have been workman under ground and I am now generally what you might call an expert miner, in the examination of mines.

Q. That is your present occupation, the examination and reporting on mining claims and mining properties?

A. Yes, sir.

Q. That does what, you say, refers to placer mining?

A. Yes, sir.

Q. What states does that experience cover?

A. Nearly all of them west of the Mississippi. Montana, Idaho, Washington, British Columbia, Oregon, Arizona, Colorado, New Mexico, Utah and California.

Q. And Washington?

A. In Washington.

Q. Are you familiar with the Nespelem country, what is known as the Nespelem country?

A. Nespelem country?

Q. Yes, sir.

A. Yes, sir.

Q. Do you know where the Nespelem river runs into the Columbia river?

A. I have been at the mouth of it, followed it pretty nearly from its head to the mouth.

Q. That is the head of the Nespelem to its mouth?

A. Yes sir, both branches.

Q. Both branches?

A. Yes, sir.

Q. When did you first look over the country, Mr. Stevenson?

Testimony of Howland Stevenson.

A. Now, I cannot answer that correctly without looking back.

Q. I don't care exactly.

A. Some years ago.

Q. And how much territory did your examination cover?

A. Well, it—my first experience in the Nespelem country was with the Haddy. E. Company. I was superintending some properties there for them and during that time I looked over the country generally. I afterwards made several trips into the country looking over different mining claims in the country, and then in August of this year I was out there and made an examination of the river, Nespelem river and some lands lying adjacent to the Nespelem river and also to the Columbia river.

Q. I call your attention to complainant's exhibit No. 4 and ask you if you recognize the place, the locations there of the Peabody and Wickman placer claims?

A. I do.

Q. Have you been over those claims and made any examination of them?

A. I have.

Q. That was in August that you refer to?

A. Yes, sir.

Q. Last August?

A. Yes, sir.

Q. Are you familiar with the panning of gold—placer mining?

A. Yes, sir.

Testimony of Howland Stevenson.

Q. I will ask you what if any examination you made with respect to those two claims last August, and the result of that examination, if you can, tell the examiner about that time and what the result was and the purpose of your examination, whether you were trying to find gold or not, using your own language in stating it?

A. I was sent out by the government to make an examination of these two placer claims. I started at a point on the Nespelem river which is up above the dam there—

Q. Let me ask you a question—this map don't show it—it is up above the dam?

A. Yes sir. I suppose I may refer to my notes, may I not?

Q. All right, yes.

A. I can give the narrative day by day.

By Mr. BLAIR:

Q. Can you testify without reference to that. Have you a recollection of what you did without reference to the memorandum?

A. I might answer the questions.

Q. If you want to give it in narrative form from that all right?

A. Using the memorandum?

Q. Was that made there at that time?

A. At that time, each day, 15th, 16, 17th, and so many different days of August that I was there.

Q. By yourself?

A. By myself.

Q. Well, you may testify to as much as you can and

Testimony of Howland Stevenson.

in testifying you may refresh your recollection, Mr. Stevenson, and if after looking at that you have an independent recollection you testify to that.

A. Well, I will try to testify without going to this.

Mr. AVERY: I want to impress on you this fact that if by looking at that and seeing it and then the things that you see there if you have an independent recollection of them, you had a right to so testify as to that.

A. I started at a dam and head gate, making a little examination of that and made an examination of the country from there; found the dam situated at the head of a deep canyon and made for the purpose, of course, of holding back the waters. From that dam there was a ditch run out to the westward. I have the figures as to the measurement of that ditch,—quite a ways the ditch had been blasted, blasted for a ditch, or blasted for a flume I should say, it was a ditch or place to lay a flume, until they came to a sharp break in the mountain side. Then I dropped down that sharp break in the mountain side about 75 feet I should say and in the bed of the creek, or Nespelem river, there had been an excavation made there evidently for the purpose of some building. From there the ditch led out—

Mr. AVERY: Just confine yourself, in order to save the record, to your effort to discover gold.

A. On the upper place that I have just described, was nearly all of it was blasted out of solid rock in the mountain side and consequently there was no placer gold there.

Mr. BLAIR: Just cut out your opinion.

Testimony of Howland Stevenson.

A. I started panning on this lower ditch and I panned on that ditch all the way to where it—of course, there is breaks in the ditch, and there are high areas, and also followed the main ditch clear up to where it crosses up on the Wickman placer claim. I run out along this ditch all the way.

Q. Which way?

A. All the way up to its end, near the corner No. 2 as marked on the exhibit.

Q. And you are now referring to that line that runs along the upper part of the Wickman placer claim?

A. Yes sir, and also enters in the Peabody placer claim.

Q. Did you find any gold in that ditch?

A. No, sir.

Q. Do you know how many samples you took out of it?

A. Well, I could,—I have got it here from day to day.

Q. All right?

A. I took a great many.

Mr. BLAIR: State the number?

Mr. AVERY: State as near as you can, you may refresh your recollection.

A. Let me get on the ditch here (examines book). From the west end of the ditch to the first break, about a quarter of a mile the ditch is mostly in sand and loose soil. I only saw one place in that distance that showed any sign of gravel and that was hardly gravel, being rocks with sharp edges, few round ones.

By Mr. BLAIR:

Testimony of Howland Stevenson.

Q. How many pans did you get. I think that was the question?

A. The pans.

Q. How many?

A. I could just figure them up here. I took nine pans along that ditch.

Q. Along that whole ditch?

A. Yes, that is from—

Q. Where is it?

A. Along here (indicating), nine pans in there (indicating). From this point to that point (indicating) I took nine pans.

Q. Just state it on there so the stenographer gets it down. You say you took nine pans there in the ditch where it enters into the Peabody, from there to the end of it on the Wickman placer?

A. Yes, sir.

Q. What other examination did you make to ascertain whether there was any gold in either of these placers?

A. I examined all of the pits or shafts that I found on on these two placer claims. Most of them had been caved. On two I found some gravel lying on dumps, on two of them, here close to the river, a little ways back from the river, and I took several pans from all of that gravel, on both of these pits, and there was no gravel there in any of the pits.

Mr. BLAIR: What?

A. No gravel there in any of the pits and only on the two pits did I discover any gravel lying on the surface,

'Testimony of Howland Stevenson.

that looked as if it had been taken out of those pits. The other pits were all in very loose soil. In all of these pits I took pannings and in not a single one nor in the gravel of the two pits that I just mentioned did I find any gold whatsoever.

Q. Do you know about how many pits there were in all that you refer, if you can give it about correct?

A. About ten.

Q. Ten what?

A. Ten pits.

Q. Did you make any other surface examination of the claims?

A. I followed the river from where this dam was down the canyon and to its mouth.

Q. That is the Nespelem river?

A. The Nespelem river. For quite a distance the river is in a rocky canyon and is very steep, quite a great fall there and when the river gets down to where it is flatter I examined several bars, gravel bars on both sides of the river and the banks of the river on both sides and I took in the neighborhood of thirty pans of dirt along there, I think it was 32, I would not be positive as to that amount, and I found in numbers—in numbers of those pans I found considerable black sand, more or less, and some garnets, but not in a single pan did I find a single trace of gold, that is placer gold, visible gold to the eye or to the glass.

Q. You are referring now to your examination of the Nespelem river from its mouth up to the time it goes out of the claims on the north?

Testimony of Howland Stevenson.

A. Yes sir. I found some sluice boxes there.

Q. How many days were you occupied in the examination of these claims, Mr. Stevenson?

A. I think it was five days.

Q. Just state the days they were, if you please.

A. August 15th, and 16th and 17th—I have not put it down, but it was August the 15th and 16th and 17th and may be 18th I think—I know I was four or five days. There was one day that I was examining on the other side for cross ledges, etc., and was not down on this ground, I mean the east side of the river. I was on both sides of the river and up higher all this time, up in the Nespelem proper. That is what you might call the lode portion of it, where the lodes are.

Q. What is the character of the country on the north of these claims?

A. On the north?

Q. I mean after you get up on the benches?

A. On the north of the Peabody and Wickman claims?

Q. Yes, sir.

A. It is mountainous, quite high.

Q. Is there any agricultural lands around there?

A. No, there isn't near the mountainous part of it, agricultural land, no sir.

Q. Is there any in that vicinity?

A. Well, on the Peabody placer and the Wickman have been taken up.

Mr. BLAIR: Just one second. You were asked whether or not it is agricultural land?

Testimony of Howland Stevenson.

Mr. AVERY: You may answer whether or not the Peabody placer is agricultural land?

A. Why, yes sir.

Q. Is there any between Nespelem, the camp of Nespelem on the north and these claims—is there any land in there of an agricultural character?

Mr. BLAIR: I object to that as being incompetent, irrelevant and immaterial.

A. The low flat from the town Nespelem down to where the river breaks in the canyon with water on it would be magnificent agricultural land.

Mr. BLAIR: I move to strike that as containing an expression of opinion of the witness and as not being responsive to the question.

Q. That is between the Nespelem camp and the claims?

A. Yes, sir.

Q. Do you recall the character of the country that is east of the Nespelem river and after leaving the top of the hill, the bluff that goes up over the Nespelem river opposite these claims?

A. Yes, there is some—

Mr. BLAIR: Do you recall?

A. Yes—there was.

Mr. BLAIR: Wait until Mr. Avery asks a question.

Q. What is the character of that land?

A. That would be the east side of the Nespelem river?

Q. Yes, above the bluff there.

A. Above the bluff there are ranches on it now, agricultural lands.

Testimony of Howland Stevenson.

Q. What was the character of your examination of these claims, was it casual or thorough?

A. I made it as thorough as I could.

Mr. BLAIR: I object to that question as incompetent, irrelevant and immaterial and move to strike the answer because it is a conclusion of the witness. The court can determine whether or not his examination was thorough.

Q. What appliances did you have, Mr. Stevenson?

A. I had a pick and shovel and two pans and sack—two sacks. I had several small sacks about this size (indicating) and two gunny sacks and I had five or six smaller sample sacks, they would be about twelve inches long and possibly eight inches wide.

From your examination of these claims in the way you examined them in your opinion were you able to ascertain whether or not that was valuable ground for placer mining?

Mr. BLAIR: I object to the question as calling for a conclusion of the witness.

A. I don't think anybody could have got any gold.

Q. You may state whether or not—?

A. Yes, sir.

Q. I ask you whether or not these claims, or either of them, are valuable for placer mining?

Mr. BLAIR: I object to the question as immaterial.

A. In my opinion, no sir.

Q. Did you find any gold in your examination of either of the claims?

A. Not a trace.

Testimony of Howland Stevenson.

Mr. BLAIR: I object to the question just before the last on and the answer to that question on the ground that this witness has not shown that he is qualified as an expert.

Mr. AVERY: That is all.

CROSS EXAMINATION.

By Mr. BLAIR:

Q. Who asked you to go up there?

A. Mr. Avery.

Q. You knew that this case was pending?

A. I did.

Q. You knew that the government was striving to obtain this land from the Multnomah Mining Company?

A. I did not know. I knew that there was a case of the government against the Multnomah Company or the Multnomah company had a case against the government, but which way it was I did not know.

Q. What was involved in that case according to your understanding?

A. Why, the Peabody placer and the Wickman placer.

Q. One of them or the other was trying to get—?

A. Get possession of the land.

Q. And you understood that was the reason why the contest was on?

A. No, sir.

Q. You did not know that—you knew that the question of the presence of gold was involved?

A. I was told to go up there and see if I could find gold in paying quantities.

(Question read).

Testimony of Howland Stevenson.

A. I did.

Q. Were you directed to the places to which you were to go in the examination?

A. No, sir.

Q. Were you directed to examine the ditch and pits?

A. I was.

Q. Were you directed to examine the river?

A. I was.

Q. When did you go there?

A. Well, I left here I think it was—I missed a train up there by going to the wrong station. I left here I think on the 13th day of August and I missed connections by getting off at Wilbur, where I used to get off at when I should have got off at Almira.

Q. So you didn't get up there until the evening of the 15th?

A. And I got up there—when I got in there on the train and on that night I went with a team and I think I got there on the 14th.

Q. Now you left here on the afternoon of the 13th?

A. I went—if I had a calendar I could tell you, but I know—I think I left here on the 12th and I got there on the 13th and went up in the hills on the 14th and was on this ground on the 15th. I know I started in on this ground on the morning of the 15th.

Q. What time in the morning?

A. I left Nespelem—I got down there probably about nine o'clock or it took me about two hours in order to walk down to the dam.

Q. You stopped at Nespelem?

Testimony of Howland Stevenson.

A. I stopped at Nespelem, yes sir.

Q. Where did you stop while examining the property?

A. I stopped two days of the time at Nespelem and then I stopped at the cabin, that is about a little ways up from the dam, a miner's cabin and I stopped there one day in order to save walking back because it was very hot weather and I didn't like to climb up that hill as it was pretty hard work.

Q. You are an expert miner, you say?

A. Yes, sir.

Q. Are you connected with any mining companies at the present time, employed by them?

A. Well I am mixed up in the ownership of quite a number of mining properties.

Q. Just answer my question?

A. With any company?

Q. As an expert?

A. No sir, not at the present time.

Q. Now you have acted as expert miner for a great number of companies?

A. I have.

Q. Now in all these states that you have mentioned you were mining?

A. I guess I was.

Q. From Utah to California—and you say that was what kind of mining?

A. Both placer and ledge mining, lode mining.

Q. In all these places?

A. Yes. Well, let me think a moment, in Colorado,

Testimony of Howland Stevenson.

I think I had some ledge mining and in Arizona and New Mexico—I had some placer in those three states.

Q. Some placer in three states?

A. Yes, sir.

Q. What were those states?

A. Arizona, Colorado and New Mexico.

Q. And the rest of the time—did you examine placers in all the other states?

A. Yes, I did.

Q. Where in Montana?

A. Out near Philipsburg, about 12 or 13 miles from there I examined a property out there as to whether it would do for placer mining or not, that would be Granite County, Philipsburg, Montana, about 22 miles or 20 miles I guess southeast of Philipsburg.

Q. Was that a placer proposition there?

A. That was what I went to determine whether it was or not.

Q. What was the determination?

A. It was not any placer there, that is in paying quantities.

Q. How much was there there?

A. Sir?

Q. How much will you say was paying quantities?

A. What?

Q. How much would be a paying quantity?—how much do you estimate that?

A. Oh if I got three cents a pan I would take it.

Q. Three cents a pan?

A. Yes, sir.

Testimony of Howland Stevenson.

Mr. AVERY: I object to this as not being cross examination and also as not being material too, anything he did in Montana.

Mr. BLAIR: He testified that this was not a good proposition up there at Nespelem.

Mr. AVERY: That has nothing to do with Montana.

Q. What did you mean by your answer, did it have reference to placer mining generally?

A. I mean where we shoveled it into boxes and I am speaking now of this place in Montana.

Q. What kind of a proposition was that?

A. That was a tough one, we did not take it.

Q. Now have you examined any placer propositions similar in character to the Nespelem property in point of water and so on?

A. I do not consider the Nespelem property a placer proposition.

Q. (Question read).

Q. I mean in point of relation of water and soil?

A. I have never seen a property exactly like this, no sir, where they had water so convenient as this is.

Q. You had never seen a proposition that had water in better shape for hydraulicking than that property, have you?

A. Yes, I think I have down in eastern Oregon, where the water was in better shape than this because they had more water. The Nespelem river up here gets dry or nearly so at certain portions of the year.

Q. During the summer time?

A. Yes sir, at certain periods of the year, at certain

Testimony of Howland Stevenson.

seasons of the year their water supply up there is limited, during certain times.

Q. Assuming that there is gold down below this is a pretty fine water head?

A. Yes, sir.

Q. You panned up there, Mr. Stevenson, and carried your dirt of course to the water?

A. Yes, sir.

Q. Where did you pan, in the Nespelem or Columbia?

A. In both places.

Q. When you were working near the Columbia of course you took the pan there?

A. Yes—the exact point that I took to the Columbia, and those that I panned on the Nespelem,—I have the number of pans and the time and where I took them and how I carried them there.

Q. What kind of a pan did you use?

A. Two gold pans, ordinary miners gold pans.

Q. What is the diameter of them?

A. Oh about 14 or 16 inches across the top. I never measured them across, but from a recollection from the pans that I used.

Q. Where along the Nespelem did you examine?

A. Well, I examined from where the Nespelem comes out of the canyon and goes along the flat country, where I first met gravel on the Nespelem and met these gravel bars on both sides.

Q. Now just open that book there, Mr. Stevenson, please and take off your glasses. Do you find any difficulty in reading without your glasses?

Testimony of Howland Stevenson.

A. No, sir.

Q. What do you wear glasses for?

A. Why, I wear them—to rest my eyes. I have got a cold in my head and I wear them to rest my eyes when I go home and sit down.

Q. You use glasses though?

A. In the evening.

Q. Right along, don't you?

A. No, sir.

Q. Just take this bottle here which I will mark defendant's exhibit "U" for identification, and ask you to look at that and see whether you can see any gold in there?

A. I see a lot of black sand.

Q. Well, just look for gold.

A. (Witness examines the bottle by light) Yes sir.

Q. What is the nature of the gold in the bottle?

A. That is very fine placer gold mixed with black sand. I can see quite a lot of gold in there when you get it right here—that bubble of water makes it kind of difficult—yet there is quite a lot of gold in here.

Q. You found no gold like that in your examination did you along the Nespelem?

A. On the Nespelem, no sir, not on the Nespelem.

Q. Did you find any gold at all up there?

A. On the Columbia—there has been gold on the Columbia for years and years.

Q. I didn't ask you that question. I asked you whether you found any gold this time, on this trip?

A. I did, on the Columbia river.

Testimony of Howland Stevenson.

Q. You didn't testify to that in direct examination, did you?

A. I was not asked that question.

Q. You did pan along the Columbia at this time?

A. It went over to a bar,—not at this time, no sir. Some years ago I went over to a bar on the Columbia river and panned there on a bar that sets out in the middle of it and there I found some very fine colors.

Q. Now you testified in your direct examination that you panned on the property down the Nespelem and along the Columbia, I understood you to answer the Columbia?

A. I never panned along the Columbia at all this trip.

Q. Now you stated you examined some land adjacent to the Nespelem river and adjacent to the Columbia river.

A. I meant by adjacent to the Columbia river there and adjacent to the Nespelem that I meant the placer claim is bounded, I believe, on the south by the Columbia river and that is what I mean in identifying the ground.

Q. You didn't then go along the Columbia river and examine the Columbia river, and examine along the Columbia river at that point—examine along the south boundary that you speak about there?

A. Not on the Columbia river.

Q. Why didn't you examine along the Columbia?

A. It was not on this land.

Q. Don't you know as a mining expert that a bar such as that is apt to be continuous, that nature and kind of gravel and so on?

Testimony of Howland Stevenson.

A. I didn't see any bars along the Columbia river.

Q. Well, that lower flat there is almost continuous to the river isn't it, the Columbia river?

A. I believe it is.

Q. If you wanted to find out whether there was gold on the Wickman placer wouldn't you as a mining expert go to a break in the land such as the shore line presents there?

A. I did go along the Columbia river. That is I went along on the Peabody placer claim where there is a deep bed of loose stuff, some back water there and you can call that the Columbia or the mouth of the Nespelem.

Q. What do you call it?

A. It is the back water that the Columbia makes with the Nespelem coming down and there is a bar there all the way for several hundred feet.

Q. And that is what?

A. Caused by the back water of the Columbia river.

Q. Don't you know that that stuff at the mouth of the Nespelem there, that that was by its appearance, that it was newly made ground?

A. Along the Nespelem?

Q. It is re wash, isn't it?

A. It is not all wash, it is sediment from the bed of an old lake. There is a great big bar stands up there 20 or 30 feet high.

Q. Did you examine though down that bed of that, opening there?

A. I did.

Q. Now, in the bed of that opening in the mouth

Testimony of Howland Stevenson.

there, that is all new ground, isn't it, newly washed up by the flood water of the Columbia river?

A. There is great big boulders in it and some gravel.

Q. I am speaking now of the bed of the mouth of the Nespelem at that point? It is all covered by new fill with newly made earth, the bed right down there isn't it?

A. The bed right down there is covered with trees and soil and brush.

Q. How wide is the opening there of the Nespelem, the mouth?

A. At the mouth?

Q. Yes?

A. Why, I should say that it was. Well, it is four or five or six hundred feet. I would not be positive. I did not go over across there. It is some distance.

Q. Well, getting back to the other question, Mr. Stevenson. You did not pan along the Columbia river proper at this time in August?

A. No.

Q. Why didn't you?

A. There was not anything there to pan, no gravel along there on the Columbia. It is all soil, this is a flat, level country here, right there, runs up to the bench.

Q. Just one second. I want the stenographer to get what you call the flat, level country.

A. This excluded strip—there is a flat, level country.

Q. Now here, just one second. I am asking you questions: you say that this excluded strip is a flat level country?

A. There is a flat there, yes sir.

Testimony of Howland Stevenson.

Q. Do you say that that excluded strip is a flat in there, a level?

A. I mean this portion down here (indicating) right here west of the river—the Columbia river, a little flat in there. Then the banks run up 30 feet high, about 500 feet of level land then a bank about 60 feet high and then this level land runs clear over to the Peabody and a little west past it and then comes up here 30 feet (indicating).

Q. Down at the end of the Wickman?

A. No, that is right across in there (indicating).

Q. I am asking about this portion in here that we have heretofore called the excluded strip?

A. Well, there is a flat in there.

Q. How far does that continue down the claim?

A. Goes down here quite a distance and then the banks rise up pretty high again.

Q. Is there any gravel down along this part?

A. Not until you get back to this bank.

Q. Which bank?

A. The first rise from the river.

Q. Do you find gravel though before you strike the Wickman, don't you, back from the river?

A. Yes sir, a big gravel bank from that first 30 foot flat back is sand or gravel.

Q. Did you say you examined that?

A. Yes, I examined that.

Q. Did you examine anywhere from the water in the Columbia river up along this first bank?

A. Yes, along there.

Testimony of Howland Stevenson.

Q. Now then—

A. I don't understand that map.

Q. Did you examine from the water of the Columbia generally along here up in that direction up to the Wickman?

A. I examined the first rise there. I don't know where it comes on this map.

Q. Well, in that direction?

A. Yes sir. There is a big gravel bank along there. I made an examination of that bank.

Q. What showing, anything?

A. I took one or two pans along there.

Q. You said a while ago you didn't make any examination along the Columbia?

A. I thought that you meant the exact bank of the Columbia.

Q. Well now, where did you pan along there?

A. I panned along the big gravel bank where the Nespelem enters into the Columbia, where this bay sets in there, the bay back water along in there.

Q. Now you are pointing to the mouth of the Nespelem?

A. Yes, and on the Peabody placer.

Q. Now I am asking you, as you understand, whether you panned on that excluded strip which is south of the Wickman placer and between the Wickman placer and the Columbia river as shown upon complainant's exhibit No. 4. Did you pan at any place along the water line or upon any portion of that excluded strip that I have described and I am now pointing to?

Testimony of Howland Stevenson.

A. I do not know because I do not understand where that bank is in reference to this map.

Q. Well do you know—you did pan on, you say, the mouth of the river?

A. Along here (indicating).

Q. In the mouth?

A. About along here somewhere. I don't know as to this property.

Q. You don't know whether it was on the Peabody placer, was it?

A. Yes, on the Peabody placer because I located that by the stake.

Q. Why didn't you go down the Columbia river and pan down there a little bit along on the excluded strip?

A. I didn't know there was any excluded strip there. I never saw this map before.

Q. You knew there was ground there?

A. Yes, sir.

Q. Fixing it in your mind that there was ground there and that it was revealed by complainant's exhibit No. 4 that a certain portion of that ground is excluded from the Wickman placer,—now I ask you why you did not go down on that portion of the ground which by that map appears to be excluded from the Wickman placer?

A. I didn't see any gravel there to pan.

Q. Did you look?

A. Yes, I carried my samples down there to pan, down in there across the ground in panning.

Mr. AVERY: You mean to wash it?

Testimony of Howland Stevenson.

A. Yes, in washing it, the samples that I took I had necessarily to cross the ground to get to the river.

Mr. BLAIR: Q. Do you know how long it is from the mouth of the Nespelem down to the end of the Wickman placer, from corner No. 4 of the Wickman placer to corner No. 3 of the Wickman placer?

A. I could not say, in the neighborhood of—I didn't survey it, I found the stake there.

Q. How far do you think it is?

A. I would say in the neighborhood of 2500, may be 3,000 feet.

Q. I think you will find it a little bit over 3,000 feet?

A. Yes, sir.

Q. Did you go along the river, the Columbia river and examine for gravel deposits?

A. Nothing except from corner No. 4 of the Peabody up to the Nespelem up to where the Nespelem river comes in—corner No. 4 of the Peabody along there up to where this river comes in here. I examined that big bar there, a great, big, high bar.

Q. You say that the country back of the claims is rather high?

A. Yes, sir.

Q. Rises precipitously from the Wickman placer, doesn't it?

A. It rises pretty fast there.

Q. Rises precipitously?

A. Not precipitously, but it is quite high.

Q. There was ravines and gullies running down through that?

Testimony of Howland Stevenson.

A. There was.

Q. And a roadway comes down there in this side, in there as marked?

A. At the northwestern end of the Peabody there is a road, a wagon road comes down a great big gulch in there.

Mr. AVERY: Do you mean the Peabody?

A. The Wickman I mean.

Q. And from Nespelem down to that place it is down hill, isn't it?

A. From Nespelem town?

Q. Yes, the town, down to the placers, it is down hill, isn't it?

A. Yes, sir.

Q. Now you spoke, Mr. Stevenson, of the country east of Nespelem as being agricultural ranches?

A. There are ranches there now.

Q. How many acres?

A. I don't know.

Q. How far do they extend?

A. Oh well, they extend—let me see. There is I know ranches up here from Stephenson's Ferry down to the Nespelem.

Q. What is grown on those ranches?

A. Well, I used to—we used to get vegetables from a halfbreed that drove the stage that had a ranch down there.

Q. Down where?

A. If I remember rightly it is pretty close to the east side line of the Peabody placer.

Testimony of Howland Stevenson.

Q. That is not cultivated now though is it?

A. What is that?

Q. That land is not cultivated is it now. Was not cultivated this year?

A. That I don't know. I know he has got a ranch in there. Anywhere that they can get a little stream of water along there they can raise any kind of vegetables that they want to.

Q. They need irrigation do they, to grow crops?

A. I know that they grow better by irrigation. I don't know that they need it.

Q. Do they use irrigation there?

A. Wherever they can get it.

Q. Do they use irrigation along there on that land that you are speaking about?

A. I have seen a big ditch on the side of the road right into these Indian ranches.

Q. Right down there near this Nespelem property?

A. I know once I was down there once some years ago and I don't know whether he is a French halfbreed, he has a ranch there out a little ways and grows vegetables on it.

Q. It was a farm down there and he has a truck patch, is that it?

A. Well, I could not say how many acres he had plowed up and in cultivation. I know he had some.

Q. They don't grow corn and wheat do they, on that land?

A. I don't know.

Testimony of Howland Stevenson.

Q. You don't know what they grow, as a matter of fact?

A. I know that they grow vegetables because I bought them from him.

Q. But how many acres there are in that ranch right next to the Peabody, you don't know?

A. I don't know.

Q. You don't know whether there are 20 or 30 or 40 or 50?

A. I don't know.

Q. You don't know the quantity of the agricultural land there?

A. No sir, I know there is a flat up there and ranches.

Q. Right down on the edge of the river?

A. Above the bank of the Columbia it is all rock.

Q. Now you testified that this land was not valuable as ground for placer mining, did you not?

A. I did.

Q. You based that opinion altogether upon your experience in finding no gold there?

A. Upon the examinations that I made of the ground.

Q. You found not a trace of gold anywhere on the property?

A. I didn't find a single one in any of the pans that I took.

Q. If you should find colors such as are found in defendant's exhibit "U"—what quantity per pan of such colors as found in defendant's exhibit "U" for identification would you regard as making a property valuable for mining purposes?

Testimony of Howland Stevenson.

A. I would have to find a great many.

Q. Well, how many?

A. Well it would be impossible to count them because they are so fine that I could not answer that question as to number.

Q. Can you state approximately how many colors?

A. Of the weight and size of these?

Q. Yes, sir.

A. The average size these—

Mr. AVERY: I object to that before you answer. I object on the ground that the question is an impossible one and it is not susceptible of an intelligent answer by reason of the apparent impossibility to tell how much gold there is in that bottle and what territory it would be taken from and its value, excellence, I might say.

Q. You can tell the various kinds of gold, can you, one from the other?

A. Yes, sir.

Q. Do you know the difference between flake gold and nuggets?

A. Certainly.

Q. And flour gold?

A. Flake gold and flour gold are practically the same.

Q. Now what kind of gold is that there?

A. I would call that fly speck gold.

Q. That is a new name?

A. That is a rough name.

Q. What is the name?

A. It is almost impossible, it is not imperceptible, but it is very, very fine gold and the colors in there are very

Testimony of Howland Stevenson.

light and would be very hard to save and they would need a great many and it would almost run away. I don't think that could be saved with riffles.

Q. With riffles?

A. Yes, sir.

Q. Could not do that, save that in a ditch?

A. In a ditch?

Q. Yes sir, by sluicing?

A. You mean by shoveling in the sluices?

Q. Yes, sir.

A. Well you might save some of it if you had bur lap in there, but it would be pretty hard to save.

Q. You could catch that with mercury?

A. Catch some of it.

Q. Catch 90 per cent of it anyway wouldn't you?

A. I will not say that.

Q. Well you could do that?

A. I don't think you could, 90% is a whole lot.

Q. Well, 80 per cent?

A. If you could catch 40 per cent of that flake gold with mercury you would be doing very very well.

Q. Might some properties even though they saved forty per cent prove very valuable if they saved 40%?

A. If they have enough yes, to have forty per cent.

Q. Now the question I asked you a while ago was, considering the situation as you have testified to it as existing up above at the Nespelem and the lay of the land and the head of the water and so on, how many colors such as are contained in that bottle, defendant's exhibit "U" for identification, would you think neces-

Testimony of Howland Stevenson.

sary to be found per pan in order to indicate that the property was a valuable or paying proposition?

Mr. AVERY: I object to that on the ground that it is not susceptible of an answer and it cannot be told—I don't think it can be told how many colors there are in that bottle.

Mr. BLAIR: I am asking him about the relative size.

Mr. AVERY: I object.

A. There would have to be a great many hundreds.

Q. Per pan?

A. Per pan.

Q. How much return per cubic yard is necessary, would be necessary, up there have you any idea?

A. Up there?

Q. Yes, sir.

A. It would depend on the size of the gold, if the gold was susceptible of being saved,—was big enough to be saved.

Mr. AVERY: Just answer the question.

A. If you would give me—if you would give me ten cents a cubic yard of gold that could be saved on that ground—what would be the cost of—

Q. We are not asking you that question—the fact that you lose gold does not add to the labor or cost of that which you do save, does it. That you cannot save some of it does not affect the labor entailed upon you to work over a cubic yard of dirt?

A. If you get ten cents in a cubic yard and lose five cents of it the labor, the cost of the labor is doubled.

Q. Answer the question.

Testimony of Howland Stevenson.

Mr. AVERY: I think he has answered your question precisely, Mr. Blair.

Mr. BLAIR: He did not, Mr. Avery, at all, and the witness I think knows that.

Q. What profit per cubic yard in the return of gold is necessary to work such a proposition as you found at Nespelem?

A. That is a very hard question to answer for the reason that the ground embodied in the Wickman and the Peabody placer claims, with the amount of water that you have there can be moved so readily that a large amount of it can be taken away in a short time. If there was any gold in those placer claims I would say that even ten cents a yard, if you save ten cents a yard you would make that a paying proposition.

Q. Of course, you understand when you say, "If you save" that is saying in other words that you do get ten cents worth out of each cubic yard?

A. If you don't get ten cents worth out of each cubic yard the placer mine is not worth anything at all.

Q. Suppose that there was \$1.00 worth of gold in a cubic yard and you got out ten cents, that is a statement that it is worked with a profit?

A. Yes, if I can save ten cents—if I can save ten cents a cubic yard on that ground I am making money on the ground.

Q. Now this property, this other property in Oregon that you spoke of as being more favorably located for hydraulicking, do you know how much the profit was there per cubic yard?

Testimony of Howland Stevenson.

A. No, I don't, because in those days we never figured on cubic yards, we figured on clean-ups.

Q. On what?

A. On the clean-ups, how much we got out every week or every time we cleaned up. It was all coarse gold down there and cubic yards we never figured—that was before the days of cubic yards.

Q. You don't know though of a more favorable hydraulic proposition other than that, than this Nespelem property as far as water and lay of land is concerned?

A. Well I don't consider this a favorable proposition because of the absence of gold. That limits your question so you don't need any explanation.

Q. As far as the water and lay of land is concerned—I am just asking about those two features?

A. There is a place up there from Grangerville where the conditions are as favorable, even a little more so, than this, but if there was gold down on these two placer claims I would say this was an ideal placer proposition.

Q. Do you know anything about the new Bloomfield placer in California?

A. No, sir.

Q. It would not be possible, assuming that there was gold there, in the Nespelem proposition, to work that at five cents a cubic yard?

A. I might—you mean to say five cents?

Q. Could you work it at a cost of five cents per cubic yard?

Testimony of Howland Stevenson.

A. Oh yes—in working—I could move that ground at five cents a cubic yard when that water is put on there.

Q. What is the lowest amount you could move it at?

A. That I don't know what the lowest amount would be. I would like to get—it would depend on the amount of power, the size of the hose and also the dump.

Q. Well—

A. I can move all that ground down on, that is on the top of the ground, I can run that into the Columbia at five cents per cubic yard very easily.

Q. Can you run it in cheaper than that as a matter of fact?

A. Well I am not a contractor. I think I could move that ground for five cents a yard.

Q. Could not do it for three cents a yard?

A. I would not say that.

Q. You are not acquainted with the new Bloomfield proposition in California, are you?

A. No sir, I don't even know what part of California that is in.

Q. Now, I am going to read to you there as the basis of my question from a book entitled, "Hydraulic in Placer Mining", by Wilson,—Eugene B. Wilson.

Mr. AVERY: I object to counsels reading from the book.

Mr BLAIR: Q. The basis of the question which I am about to ask you is as follows:

Mr. AVERY: I object to reading from any book, putting the contents of any book in the record in this way. It is immaterial and incompetent.

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Q. As follows: "On page 157, "In Idaho, a placer having less value than two cents per cubic yard has been worked at a profit.

Q. Now in view of your testimony, would it be your opinion that this property could be worked at two cents per cubic yard?

Mr. AVERY: I object to that because it is not cross examination and immaterial, irrelevant and incompetent, and the question has been answered at least four times.

A. I would not undertake to work that ground at two cents a cubic yard.

Q. I am not asking you that—what do you think about it?

A. I think that it would not pay at two cents per cubic yard.

Q. You don't know anything about the North Bloomfield proposition in California?

Mr. AVERY: I object to that as immaterial.

A. I have heard of it, but not often, I have read it in some of the mining—seen some mining notices of it in some kind of papers, but I don't know anything about it.

Q. You don't know anything about the presence or absence of water there?

A. I don't know anything about it.

Q. It is a placer proposition?

A. Don't even know that.

Q. In view of the following read from the same book on the same page, 157; "The yield of the gravel at North

Testimony of Howland Stevenson.

Bloomfield was 7.7500 cents per cubic yard and the cost of mining 4.10 per cubic yard,—ground carrying 3.99 cents per cubic yard has been worked at a profit on North Bloomfield."

Q. Is your opinion still the same with reference to this?

Mr. AVERY: I object to that on the ground stated in the last question and also upon the ground that it is a hypothetical question with absolutely nothing in the record upon which to base it.

Mr. BLAIR: This witness has stated that this was an ideal placer proposition.

A. Provided there was gold there to mine.

Mr. BLAIR: I know you are anxious to get that in the record as often as you can.

Q. Now have you ever worked a placer, gold placer property?

A. I A. I did once for a short time.

Q. Where?

A. Eastern Oregon.

Q. What was the nature of that?

A. I fell down on it.

Q. What was the nature of it?

A. We built a ditch and started a pipe down and some gravel in the sluice boxes.

Q. How long did you work at it?

A. We worked a good many months building the ditch. I have forgotten how many now. I think we worked on the pipe about fifty days and then the water

Testimony of Howland Stevenson.

gave out and the ground gave out,—that is the gold in the ground gave out.

Q. The gold in the ground gave out?

A. Yes, sir.

Q. Did you ever work any other placer proposition?

A. Not with my own hands.

Q. When you were working up there on this property at Nespelem in August and examining it, were you alone?

A. Yes, sir.

Q. No one with you at all?

A. Not a soul. I only met one man during the whole time I was there.

Q. What was his name, do you know?

A. Hopkins. I think a son of old Vernile F. Hopkins who lives down the river.

Q. You said you stopped at a cabin at that place—any one live in the cabin?

A. Yes, sir.

Q. Who?

A. There was a miner there. I have forgotten the name now, worked for a man named Callahan.

Q. Did you see Callahan himself?

A. Yes, sir.

Q. Talked with him?

A. Yes, sir.

Q. Talked to him about the placer claims?

A. Yes, sir.

Q. What was the drift of his remarks to you?

Mr. AVERY: I object to that and I insist on the ob-

Testimony of Howland Stevenson.

jection as being immaterial, incompetent and irrelevant and heresay and I ask a ruling on that.

Mr. BLAIR: I think that it will come out—you may answer.

Mr. AVERY: Wait a minute. I think there is an objection there for the examiner to pass upon, and I want him to make a decision. This is utterly irrelevant and incompetent and manifestly hearsay.

Mr. BLAIR: I don't want to tell this witness what I want him to testify to although it is something material in this case.

Mr. ADAMS: Do you object to it on the ground that it is impertinent. That is the only ground that I can rule upon.

Mr. AVERY: I object to it on the ground that it is immaterial, incompetent, irrelevant and calling for hearsay evidence and impertinent.

Mr. BLAIR: I will ask another question. I will withdraw that question.

Q. I will ask you, did you have a conversation at that time with Mr. Callahan with reference to the presence or absence of gold on these properties?

A. No, sir.

Q. During these days, the 15th and 16th and 17th and may be the 18th, you said you examined some other properties up there?

A. I think that was the day before I went down on to the lower ground. I went over to look and see where some ledges cross, if any cross, on the river above the falls.

Testimony of Howland Stevenson.

Q. How far above the falls?

A. Up above Callahan's cabin.

Q. Was that with reference to this case?

A. Yes, sir.

Q. What did you find—any ledges crossing?

A. I didn't find anything that interested me in any extent.

Q. Didn't interest you?

A. No, sir.

Q. Why not?

A. Because there was not any there that I saw—some little rock down there in one or two places, but I didn't see any gold in any of them.

Q. Do you know the name of the property?

A. No.

Q. Is it the "double-header"?

A. I know the double-header and I know where that property is and it is way up in the mountains in the other direction, way up west.

Q. How far above the bar was this property?

A. There is several holes along the river up there that and I don't know how many, how far.

Q. A mile?

A. No.

Q. You were there examining that property on the 15th you say?

A. I was examining these properties—the first day I was on this property was the 15th, and the day after that, on the 13th, I walked down from Nespelem all along that flat there down to where the river first breaks

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and looked along the bank there to see if there was any ledges crossed.

Q. You were up there the day you started, in your present testimony—when did you start for Spokane?

A. I think I left Spokane on the 12th and on the 14th—if I had a calendar here I could tell you better.

Q. Have your books there?

A. I have not that in the books here, but the day I got down on the property.

Q. What day is that?

A. Aug. 15th was the morning I started on this property, and the day before that would be the 14th.

Q. Yes, that is true.

A. That on the day before in the afternoon I went down along on the bank of the river, to look around, took a cursory look around.

Q. What time of day did you get into Nespelem?

A. In the afternoon some time when the stage arrived. I don't remember. Probably four or five o'clock.

Q. Where did you take the stage from?

A. Almira.

Q. You drove from Wilbur over to Almira?

A. Yes, sir.

Q. Arrived there then the afternoon of the 14th?

A. No, the afternoon of the 13th.

Q. Now you went to Wilbur on what day did you say?

A. On the 12th I left here in the afternoon.

Q. About 2 o'clock?

A. Yes sir,—if I am correct in its being the 12th,

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and I think I am, and I got to Wilbur and I got off at Wilbur unwittingly though to take the stage there and I registered at the hotel and found out that the stage run had been transferred so that it didn't leave Wilbur any more, but left Almira, and I went to the livery stable at Wilbur and took a team and they drove me to Almira and I took the stage next day because the next day would be Saturday and otherwise I would have to stay over until Monday and I didn't want to lose that time, so I arrived in Nespelem on the stage leaving Almira on Saturday, I think the 13th,—now whether that is the 13th I cannot say, but I know it was Saturday and I got there on the stage and Sunday afternoon I wandered down the bank of this river and took a look around to see my surroundings and see what I had to do and I started in on Monday, the 15th on these claims.

Q. And you were on the property until the 18th?

A. I am not sure whether I left there on the 18th or not. I might have left Nespelem on the 18th.

Q. That would be in the morning?

A. Yes sir. I know I was there 3 or 4 days.

Q. You stated in your direct examination that you was there five days?

A. I said from 3 to 5 days. I meant the trip.

Q. Do you know how many pans there are in a cubic yard of dirt?

A. Well, that varies.

Q. Well there was an estimate that miners make?

A. They generally estimate from 130 to 160 and there was some dirt—I measured a pan that I was pan-

Testimony of Howland Stevenson.

ning and I made a hundred and sixty-six pans a cubic yard, but I have seen it where it run less than that.

Mr. BLAIR: That is all.

Mr. AVERY: Mr. Stevenson, how many notes have you got there, how many pages of your book does it cover?

Mr. BLAIR: I object to that as absolutely immaterial and irrelevant.

A. Fourteen pages.

Q. Well is that where you noted down the entry of what you did up there on that examination, a complete narrative?

A. A complete narrative from the day I started.

Q. Was it made at that time?

A. It was.

Q. I will ask you then to state with that in view and consulting it just as much as you want to, to state everything that happened on that trip after you reached the ground?

Mr. BLAIR: I object to that as not being proper redirect examination and as having been entered into on his examination in chief and as properly chief examination.

Mr. AVERY: Independent of that if it is not proper redirect examination I will, for the purpose of that question alone, I will ask to recall the witness in order to put that in.

Mr. BLAIR: I object to Mr. Avery asking this question on the ground that he has already gone over the ground covered by the question asked.

Testimony of Howland Stevenson.

A. I started on the 15th.

Q. Just narrate it right through, taking your time.

A. I started on the 15th and made a measurement of the dam and tail race and examined continuously up above the dam where there is an old forge and looked at some holes,—I didn't go up to those holes,—and I then started down this excavation that had been made for—looked as though it had been made for the purpose of putting a flume on there to carry water and on these bars I dug along in there, I took twelve pannings on these different bars. One bar was older than the others and I didn't notice it at first because it laid back and so much trees on it and I took five pans on there. I then followed the river down taking pannings from the different little bars until I came to where the road crosses the river and I followed the road up until I came to where there was a cabin, built out of logs partially and partially out of lumber I think, and it was on the right hand bank of the river, and right near the bank and along that river bank I saw what looked to me what if any place that I had yet seen would carry gold. The side of the bank, the right hand side was quite heavily stained with iron oxide and some black oxide and there had been a number of holes dug in there, small holes. I panned in one or two of those and then took some from the little holes, took some pannings out of those, and the creek being right there I made my pannings there.

There were two old sluice boxes there, one standing up on the bank and one laying down below the bank, kind of up side as it had some—I don't know—it had

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one or two places there was little water gullies washed down and coming in there.

I then went along for probably a thousand feet until I came to a great, big, high clay soil bank, a good many—several hundred feet high and underneath that I found three bars. I then went over along the river again. I had not got yet to the mouth of the river, and followed the river clear down to its mouth,—some of the bars—wherever I could find one that was—one that looked at all likely and on the sides of the Nespelem river and took pannings there and panned in different places. I then afterwards, after going over the Nespelem river, or a portion of it, that portion of it, I went back on the flat ground on the Peabody placer and the Wickman placer and I found other pits, some ten I believe in total. Each one of these pits I examined and I wrote a description of it and took pannings there and in none of these pits did I obtain any placer gold.

I then started on this long ditch which ends somewhere near the northwestern corner of the Wickman placer and examined the ditch from where it commences to where it leaves, well, in fact to where it goes away, as far as it goes, where it does. There has been a portion of it washed out and the ditch is destroyed so that it is disconnected with the other ditch from this part and I took pannings along that ditch everywhere that I saw any sand or any gravel.

One place above this cabin that I mentioned up on the line of the ditch, this red oxide stands out there quite prominently and I took two or three pannings

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some cloth of some kind, I have forgotten whether bur-lap or blanket cleated down in it and there was some gravel in that and I gathered up a little there and put it in the pan and washed it, but didn't get anything out of it.

Then I crossed the river there over to an old bar where I found some new clay and some holes, some little holes dug in that and I took stuff out of those holes and then I run on out until I came to the end of the bluff where it dropped down the hill and went down where there was an excavation in the river bed, evidently for the purpose of putting up some kind of building on there. Above that a short distance the ditch started and it run for several hundred feet west along in the soil and brush and along the side of the hill and I followed that out. There I started to take panning in the ditch,—in the bottom of the ditch and in the sides of the ditch and I took a number along there until it run out to a rocky point where it ended. I then dropped from there down to the river bed.

Mr. AVERY: What river?

A. Nespelem river and I went along some ways just up in the canyon there, the river I mean is in a canyon and I went on down to where the river began to be in the flat country and I began to find gravel on the sides of the river bank, on the right hand side going down in one place,—I have a sketch map showing that. I found loose clay soil and some bedrock sticking out there and a lot of sand and gravel along there and I took different pannings along there in different places,

there to be very sure because I suspected gold there if anywhere. The ditch is quite snake like there and runs around and up to the top of another hill and further up on top there is another place where the red oxide sticks out and a little gravel bar there and I panned in that gravel and took them to the river and panned them and didn't get anything. I then examined the river bank on the opposite side and took a number of pannings along there for a distance of several hundred yards I should say, with the same results.

Then I followed the river down some distance examining other places where there was any bars and likelihood to find any gold until I came to a place opposite where the fence of this ranch is on the other side of the river, makes a turn. And from there, I left the river then and went up on the bench land on the Peabody placer and found pits there with gravel, not in the, the gravel was on the sides of the pits, the tops of the pits were caved and I panned in the gravel there and I found—

Mr. BLAIR: I object to all of this.

A. (Cont.) I panned the tops of those pits with no results, and then traveled westerly to the northwesterly end and found some pits,—they were caved and no gravel in them and I took dirt from those pits and put it in a little sack that I had, that I carried for that purpose and I carried them to the river and panned them with no results.

Now I am not giving this in reference to each particular day because I don't remember when I quit and

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went back to town, but I am giving it as I went along.

Mr. AVERY: Does that cover it all?

A. (Cont.) I took my samples to the river in each instance and panned them there and when I got up to the end of this ditch on the third day, or whatever time it was, when I was there that was the end of my trip and I went back to Nespelem and took the stage the next morning and came home.

Mr. BLAIR: I move to strike the answer as mere repetition and for the reason stated in my former objection.

Mr. AVERY:

Q. Did you find any gold whatever in your examination that you have last narrated?

A. Not a single color.

Q. What is your age?

A. 53.

Q. Counsel asked you about your acting as expert for different mining companies. What companies have you acted as expert for?

A. Well I have acted for individuals more than I have for companies, but I have been employed as superintendent by numbers of companies. I acted as expert for the—I don't know the names of the companies, but I have examined, made reports on properties for a great many companies and I could refer generally to them and while I was in Rossland for several years examining properties for anybody that came into the office and doing that kind of work for any one that had it to do, sometimes they were for corporations and some-

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times for individuals, I could not recite the different companies that I have made examinations for.

Mr. AVERY: That is all.

Mr. BLAIR: Q. Are you a married man?

A. Yes, sir.

Q. Do you drink?

Mr. AVERY: I object to that as irrelevant and immaterial.

Mr. BLAIR: I want to know whether he had whiskey with him on this trip?

A. I will answer that. I didn't have any whiskey on this trip because it is not allowed there.

Mr. BLAIR: That does not prevent a man having it—I understand he drinks pretty heavily.

I guess that is all.

Mr. AVERY: I have been making an objection, but I will say no more about it.

Mr. BLAIR: It is just a mere matter of examination.

Mr. AVERY: It is stipulated between the parties that the deposition of Mr. Collier need not be read except in argument or by the court and that the only objections imposed to it are those that already appear and have been specifically made.

Mr. AVERY: That is all.

The government rests.

At this point the hearing was adjourned until 2 o'clock P. M. Dec. 18, 1909.

Testimony of Joseph Kroll.

Spokane, Wash. Dec. 18, 1909.

2 o'clock P. M.

Hearing resumed pursuant to adjournment, present all the parties.

Mr. BLAIR: I am going to offer an additional witness.

Mr. JOSEPH KROLL, a witness called by the defendant, was duly sworn.

Mr. AVERY I object to the swearing of this witness and his examination on the ground that it is contrary to the stipulation entered into in regard to this case.

Witness sworn.

Mr. BLAIR: I wish to state before I ask this witness any testimony that the understanding upon which the stipulation was made at the time of the hearing was that it contemplated witnesses whose knowledge of the placers had already been gained and that so far as the understanding of counsel for the defendant is concerned the stipulation was entered into on that understanding. While at that time counsel for the defendant entered into the stipulation in view of the statement made by Mr. Avery, counsel for the complainant, that the testimony of the witness in chief who would be offered by the government, had testimony to give similar to that of Mr. Collier and that it appears that all the testimony given by this witness refers to an examination had since the former hearing in this connection. I think that states what I stated.

Mr. AVERY: The government objects to this witness testifying in this case and to the defendant offering

Testimony of Joseph Kroll.

him as a witness or using his testimony in the case on the ground that it is contrary to a stipulation entered into and of record and that the defendant had rested with the exception of certain evidence or testimony described in the stipulation.

Mr. AVERY: The stipulation, I think counsel is mistaken in the statement or inference that there was no intention of putting on any witness whose knowledge had been acquired or was acquired in any degree after the date of the stipulation was made for the reason of the making of the stipulation was, as I believe counsel will admit, that at the time of that hearing it was brought on rather suddenly at counsel's request, at the request of counsel for defendant because one of his witnesses desired to go home to Michigan. The witness I refer to was Mr. Wickman; that I was unable to have all of the testimony ready in at that time for that hearing so as to let Mr. Wickman leave for home on the first day of the date which the hearing was set down for and therefore desired to get the stipulation which is now in the record.

Mr. BLAIR: You stated that you had just one witness—at the time that that stipulation was made you will recall telling me you had but one witness and of course at that time related as I understood it, at the time of our former conversation, to a witness whose knowledge was already had. This witness is not only in the nature of examination into the case in chief, but also in the nature of rebuttal and that is the reason

Testimony of Joseph Kroll.

I think it is rather unfair to the defendant that we should not be permitted to follow it up.

Mr. AVERY: And in so far as this witness' evidence, the testimony of, Mr. Stevenson, is not on the case in chief, it is offered as in rebuttal, but under the stipulation it is claimed primarily that the evidence of Mr. Stevenson is proper and in accordance with the stipulation.

I will add a further reason for the objection which is that the failure to put in any more rebuttal and to bring any more witnesses in the case in chief were prompted by the fact of the stipulation which was entered into, though not reduced to writing, before the commencement of the taking of any testimony. It now leaves the government in the position of not having prepared itself to combat or impeach or say anything in respect to the evidence of this witness, if it should desire to do so, and particularly that the present United States attorney expects every day to be relieved from his official duties on account of his term having expired and consequently will not be in a position to conduct the case any further or give any one else in a clear manner the status of the case so that it can be consistently concluded or speedily concluded.

Mr. BLAIR: I want to ask something further there. It will be agreed by both parties that since the former taking of testimony in this case that a certain exhibit of the defendant's, viz: exhibit "A", being a small bottle with a nugget of gold therein—

Mr. AVERY: I am perfectly willing that it should

Testimony of Joseph Kroll.

be stated, but I think that the examiner had better make the certificate.

Mr. BLAIR: I want to state this,—“And the nugget of gold therein”.

Mr. AVERY: I will not concede to that. You can go on and make the statement.

Mr. BLAIR: “therein has been lost since being placed in the charge of the clerk of this court” and that another exhibit of the plaintiff’s testified to by the witnesses for the defense which contained black sand and gold has been broken and on account of the foregoing the defendant claims that as a matter of right that he should be permitted to put in testimony somewhat similar in character as that represented by these exhibits.

Mr. AVERY: In respect to which the United States attorney suggests that that is a new ground for putting on a witness and that there cannot be any testimony of this character put in because of the reasons stated inasmuch as these witnesses I assume cannot identify the exhibits referred to as having been lost or broken.

I was going to say, to add this stipulation, that under objections by the government that the witness’ testimony may be presented to the court with the rest of the record and if the court deems that it is properly introduced at this time it may be considered, otherwise it shall not be considered.

Mr. BLAIR: I agree to that.

Mr. AVERY: I might say, of course, that I want my objections throughout the examination to stand.

Testimony of Joseph Kroll.

Mr. BLAIR: I will state here, however, that part of his examination—I didn't directly state it herein before, but a part of it will be in rebuttal to Mr. Stevenson.

By Mr. BLAIR:

Q. State your name?

A. Joseph Kroll.

Q. Where do you live?

A. I live part of the time in Nespelem and part about Coulee City.

Q. You are a rancher at Coulee City, are you?

A. Yes, sir.

Q. On a farm there?

A. Yes, sir.

Q. On a farm there?

A. Yes, sir.

Q. What do you do at Nespelem?

A. I mine.

Q. A miner?

A. Yes, sir.

Q. Own any property there?

A. Yes, sir.

Q. What do you own in the way of property?

A. I have got three quartz claims.

Q. How long have you been acquainted with the Nespelem country?

A. Ever since 1898.

Q. 1898?

A. Yes, sir.

Q. How long have you been a miner?

A. Ever since 1880.

Testimony of Joseph Kroll.

Q. Where have you had mining experience?

A. Wyoming, Montana, Idaho, and the last eleven years in Washington.

Q. The last 11 years in Washington, and where?

A. On the south half of the Colville reservation.

Q. What we call the Nespelem country?

A. Yes, sir.

Q. Have you ever had any placer experience?

A. Yes, sir.

Q. Experience with gold placers?

A. Yes, sir.

Q. Where?

A. Wyoming and some in Montana and I prospected a good deal on the south half of the Colville reservation.

Q. When did you first go to the Nespelem country?

A. October 1, 1898.

Q. October 1, 1898?

A. Yes, sir.

Q. Are you acquainted with the Wickman and Peabody placers?

A. Yes, sir.

Q. You are acquainted with their locations with reference to the Nespelem and Columbia rivers?

A. Yes, sir.

Q. Now when did you first see the ground that is now covered by the Wickman and Peabody placers?

A. Oh some couple of years ago or such a matter.

Q. When did you first see it the first time?

A. We were panning that ground—we panned there.

Q. How is that?

Testimony of Joseph Kroll.

A. Last October.

Q. I say when were you first there?

A. Before the claim was there?

Q. Yes, sir?

A. It was Oct. 15, 1898.

Q. Oct. 15, 1898?

A. Yes, sir.

Q. Now state what you were doing at that time?

A. I was prospecting.

Q. How is that?

A. Prospecting.

Q. Where did you prospect—did you prospect the Columbia river at that time?

A. Yes, sir.

Q. Where?

A. On the Columbia right at the mouth of the Nespelem.

Q. Right at the mouth of the Nespelem?

A. Yes, sir.

Q. And did you prospect up the Columbia river?

A. Yes, sir.

Q. How far?

A. I prospected about two miles below the mouth of the Nespelem and up the Columbia river to the mouth of the San Poil and up the San Poil about 30 miles—to the Thirty Mile on account of its being 30 miles from the mouth of the San Poil.

Q. Were you panning?

A. Yes, sir.

Q. For gold?

Testimony of Joseph Kroll.

A. Yes, sir.

Q. Did you find any gold along the Columbia?

Mr. AVERY: I object to that as incompetent, irrelevant and immaterial.

A. Yes, sir.

Mr. AVERY: I has nothing to do with the issues here.

Q. The Columbia as you have described it, that part of the Columbia as you have described it about the mouth of the Nespelem—is up the river from the Nespelem river?

A. No, some above and some below.

Q. Some 30 miles above is it not?

A. Yes, sir.

Q. Did you at that time do any panning around the property involved in this case?

A. Yes, sir.

Q. State where you panned at this time on this property?

A. I panned along the Nespelem river from the falls down to the mouth and found good results.

Mr. AVERY: I object to that as not responsive.

A. I panned.

Mr. AVERY: I move to strike it out as being a conclusion of the witness.

Q. You panned you say from the falls down to the mouth of the Nespelem?

A. Yes, sir.

Q. Do not say anything about results now, but just state where you panned on the property there.

Testimony of Joseph Kroll.

A. I panned down the Columbia river.

Q. Past this property?

A. Yes, sir.

Q. Did you pan any on the margin of the property along the river?

A. Yes, sir.

Q. That is, along the Columbia river bank?

A. Yes, sir.

Q. Now state with what result—state if you found anything in the Nespelem river from the falls down to the mouth?

A. I found good results.

Mr. AVERY: I object and move to strike it out as being a conclusion of the witness.

Q. What do you mean by good results?

A. I found gold colors.

Q. How long were you panning there at that time?

A. I was there from October 15 to November 11th.

Q. That is on that property?

A. Yes—though I didn't pan every day.

Q. Can you state approximately the average amount of colors that you found in your panning along the Nespelem at that time—you don't need to state the exact number but state if you can recall the average number of colors you found?

A. I panned from 1 to 20 though I didn't count them every pan because I didn't think it was worth while.

Mr. AVERY: Didn't think it was what?

A. I didn't count the colors, simply they were there and I didn't count them. It is not customary to count

Testimony of Joseph Kroll.

them every time, but I found from 1 to 18 colors or flour gold at that time.

Q. I call your attention to complainant's exhibit No. 4 and call your attention to the excluded strip between the Wickman placer and the Columbia river. Did you pan along that margin?

A. Yes, sir.

Q. What did you find there—did you find any gold?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

Q. For what purpose were you panning there, Mr. Kroll?

A. My intention was to find gold there and make a location.

Q. On that property?

A. Yes, sir.

Q. Did you locate on the property?

Mr. AVERY: I object to that as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Did you locate on this property?

Mr. AVERY: I make the same objection, and in addition it is not the best evidence.

A. Yes.

Q. What date?

Mr. AVERY: I object to that.

A. The 13th, 14th and 15th. I made three locations on three days.

Q. What are the names of the locations?

Testimony of Joseph Kroll.

Mr. AVERY: I make the same objection.

A. Sunrise, Monday and Ditto.

Q. When did you make those locations?

A. On July 13th, 14th and 15th, 1898.

Q. I call your attention to the memorandum there, Mr. Kroll, was it October or July?

A. October, I was looking at the end of the book.

Q. You have in your hand a book, Mr. Kroll, what is that?

A. That is my diary.

Q. When were those entries made in that book?

Mr. AVERY: If he is going to testify from the book I would like to see it.

A. In 1898.

Q. I call your attention, Mr. Kroll, to the date which is opposite the Sunrise placer and ask you whether that is the 15th or 13th. I cannot tell myself?

A. The 13th.

Q. Well then you were there upon the property before the 15th?

A. Yes, sir.

Q. Aside from that book would you have a recollection of the dates upon which you were there?

A. No, I would not.

Q. But with your recollection refreshed by that book you know that you were there at the times stated in the book?

A. Yes, sir.

Q. Did you work these locations?

A. No, sir.

Testimony of Joseph Kroll.

Q. Why not?

A. I have not had the means.

Q. Did you attempt to get the means?

A. Yes, sir.

Mr. AVERY: I object to that as being absolutely immaterial.

Q. To whom did you apply?

Mr. AVERY: The same objection.

A. I went to Keller and applied to Farr Brothers.

Q. Did they assist you?

A. No, sir.

Mr. AVERY: I am willing to concede that he could not get the help.

Q. For what reason did they not help you?

Mr. AVERY: I object to that as a conclusion and hearsay evidence and immaterial and irrelevant.

Q. What reason did Farr Bros. give you for not helping you?

Mr. AVERY: That calls for hearsay evidence and absolutely incompetent.

Mr. BLAIR: I wish to state in the record that the reason why a man does a thing is always shown by his statements.

Mr. AVERY: But not the reason why someone else does not do a thing.

Mr. BLAIR: That is just exactly it.

Q. You may state.

A. They had a store in the town of Keller and they also had pretty near 38 quartz claims located in the Manila district.

Testimony of Joseph Kroll.

Q. Did you collect any gold at that time?

A. Yes, sir.

Mr. AVERY: I object to that unless it came from these claims.

A. Yes, sir.

Q. How many pannings did that gold represent?

A. I could not state as to that.

Q. It didn't represent the total pannings while you were there?

A. No, sir.

Q. Now you have panned along the Columbia you have stated?

A. Yes, sir.

Q. Near the Wickman placer?

A. Yes, sir.

Q. What is the fact with reference to the kinds of gold found on the Nespelem river and on the Columbia river relatively?

Mr. AVERY: I object to that as irrelevant, incompetent and immaterial.

Q. You may answer.

A. The Nespelem river is coarser than the Columbia river. The Columbia river gold is very very fine, what we call flour gold.

Q. Where did you locate these claims on this property with reference to the Nespelem river?

Mr. AVERY: I object to that, he said he located these claims and he could not locate them anywhere else:

Mr. BLAIR: I think that they did not cover the

Testimony of Joseph Kroll.

whole property, is my idea—he didn't locate all of this.

Q. You located 3 claims?

A. Yes, sir.

Q. And where were they with relation to the river, the Nespelem river?

A. On the south side—on the northwest side of the Nespelem river, butted against the Nespelem river and run in a northwesterly direction.

Q. Have you ever panned there since?

A. Yes, sir.

Q. When was that?

A. Last October.

Q. Of this year?

A. Yes, sir.

Q. How many pannings did you pan at that time?

A. About 8 pans.

Q. Where did you pan them?

A. Down the Nespelem and Columbia rivers.

Q. Do you remember approximately how many you made on the Nespelem?

A. I got about 5 on the Nespelem and 3 down the Columbia river.

Q. Did you find any gold in those pans?

A. Yes, sir.

Q. From what point on the stream, the Nespelem river did you take your pans?

A. What?

Mr. BLAIR: I withdraw the question.

Q. What point on the Columbia river did you pan at that time, that is in October?

Testimony of Joseph Kroll.

A. From the mouth of the Nespelem—from the Nespelem river where the two banks comes in down the river probably for a quarter of a mile.

Q. And where on the Nespelem river did you pan last October?

A. I panned there on the wagon road across the river, from where the wagon road crosses the river down to its mouth.

Q. Did you find gravel all these places?

A. Yes, sir.

Q. And what showing of gold did you find if any in these pans—what did you find in the way of gold if any?

A. I found gold colors.

Q. On the Nespelem river?

A. Yes, sir.

Q. Any on the Columbia?

A. Yes, sir.

Q. Of those 8 pans, how many bore gold would you say?

A. Five or six—I know I got some blanks, what we call blanks, 2 or 3 pans didn't get nothing.

Q. How did these colors average up in point of numbers?

A. What?

Q. How did these colors average up in point of number of colors?

Mr. AVERY: I object to that as not being understandable.

A. From 1 to 6?

Q. From one to six colors?

Testimony of Joseph Kroll.

A. Six was the biggest result, that is on the Nespelem. On the Columbia river the gold was so fine I could not count them.

Q. I call your attention to defendant's exhibit "U" for identification, and ask you if you know what that it?

A. Yes, sir.

Q. What is it?

A. It is gold.

Q. Gold any anything else?

A. Black sand.

Q. What does that represent?

A. The amount of gold?

Q. No, is that the gold that you panned?

A. Yes, sir.

Q. In those five or six pans?

A. Yes, sir.

Mr. AVERY: I think I will ask you to let the witness tell, how many pans that came out.

Mr. BLAIR: He says 2 or 3 were blanks so I just subtracted for him.

Mr. BLAIR: I offer this defendant's exhibit "U" for identification in evidence.

Mr. AVERY: I object to that for the reasons heretofore stated in respect to this witness and also for the reason it is incompetent, irrelevant and immaterial and not sufficiently identified in respect to these claims.

Q. Taking the colors represented in this defendant's exhibit "U" can you state approximately how many colors of the average size contained herein would make a cent?

Testimony of Joseph Kroll.

Mr. AVERY: I object to that as incompetent and immaterial and the witness has not shown himself qualified to answer and it is not susceptible of being answered.

Q. You may answer.

A. About 45 colors.

Q. It takes more of the Columbia river gold than of the Nespelem gold does it not?

A. Yes, sir.

Q. You heard the testimony this morning, Mr. Kroll, of Mr. Stevenson?

A. Yes, sir.

Q. With reference to the agricultural character of this land on the Wickman and Peabody placers?

A. Yes, sir.

Q. State if you know the character of the land so far as its agricultural properties are concerned?

A. In 1898 that was located by a halfbreed.

Mr. AVERY: I object to that as not being the best evidence of a location and incompetent and immaterial.

Q. By what?

A. A halfbreed.

Q. Has it been farmed?

A. Yes, sir.

Q. With what result?

A. Nothing.

Q. Is it farmed now?

A. No, sir.

Q. Now what about other agricultural lands, that piece called the Condon field—about how many acres in that do you know?

Testimony of Joseph Kroll.

A. Over 100 acres.

Q. That is considerable higher is it than these claims?

A. Yes, sir.

Q. Is that farmed at the present time?

A. A small portion of it.

Q. How much?

A. Probably 40 acres.

Q. What is grown on it?

A. He tried to raise grain, but didn't raise it.

Q. Is there any other agricultural land lying near this property?

A. No, sir.

Q. Any across the river?

A. A long ways across the river.

Q. How far?

A. You mean across the Nespelem?

Q. Across the Columbia?

A. Probably 5 or 6 miles.

Mr. AVERY: I object to that as irrelevant and immaterial.

Q. You have had experience as a miner?

A. Yes, sir.

Q. Do you know where gold is most frequently found—most frequently found?

A. Yes, sir.

Q. The character of the soil and so on?

A. Yes, sir.

Q. You heard the testimony of Mr. Stevenson this morning?

Testimony of Joseph Kroll.

A. Yes, sir.

Q. From your knowledge of the Nespelem and the frequency of gold therein, is it possible that a man could pan down the Nespelem river with the result testified to by Mr. Stevenson?

Mr. AVERY: I object to that as calling for the witness' conclusion as to what Mr. Stevenson has testified to and as no proper foundation upon which to base an answer.

Q. You may answer.

A. It is almost impossible for a man to pan down the Nespelem river without finding colors.

Q. Unless he endeavored to do so?

Mr. AVERY: I object to that as leading in addition to all the other objections I have made.

Q. From your experience in panning on the river, if a miner, if one having reasonable experience in panning started at the mouth and made a fairly good examination of the sands of the river and lying along the river, would it be possible to avoid finding gold, to fail to find gold?

Mr. AVERY: I object to that as not being in competent and not being a proper question. It is indefinite.

Q. You may answer.

A. They could possibly be, but the margin is very small. A man could possibly pan twelve pans and miss it if he would take from the top gravel where the water recently made the bar at the present time—the gold is not on top of the bar, it is down in the bottom.

Q. And generally speaking from your knowledge does

Testimony of Joseph Kroll.

or does not the soil along the Nespelem bear gold in its gravel deposits?

Mr. Avery: I object to that as not sufficiently definite and calls for a conclusion and without a proper foundation for the conclusion. It is incompetent.

Q. You may answer.

A. Yes, sir.

Q. That is according to your knowledge?

A. Yes, sir.

Q. In your pannings on the Nespelem river in October of 1898?

A. Yes, sir.

Q. I think you testified?—

A. Yes, sir.

Q. I may have forgotten—did you testify that you—from what point up near the falls if you did, did you pan. Did you start with the falls. I don't recall what your testimony was?

A. About 100 yards below the falls.

Q. Down to the mouth?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. AVERY:

Q. Where do you live now, Mr. Kroll?

A. I live 8 miles from Coulee City.

Q. How long have you lived there?

A. Three years I have lived there.

Q. What were you doing over on these claims last October?

A. I went over to prospect.

Testimony of Joseph Kroll.

Q. Who asked you to go?

A. The Multnomah Mining Co.

Q. Did you ever work for them?

A. I worked some for them, yes sir.

Q. When did you work for them?

A. About a year ago.

Q. How long did you work for them?

A. Oh about 3 weeks.

Q. Where did you work for them—in their lode mines up there?

A. Yes, sir.

Q. What did you do?

A. I done the blasting on the work, rock work.

Q. Who were with you when you went on these claims in October last?

A. I was alone.

Q. How long were you there?

A. Probably 3 hours.

Q. You went from where?

A. Went from my cabin.

Q. Where is your cabin?

A. About 6 miles up the Nespelem river north, due north from the mouth of the Nespelem.

Q. How did you happen to be at your cabin at that time—is that where you lived then?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. Did some one come there and ask you to go down?

A. Yes, sir.

Testimony of Joseph Kroll.

Q. Who, Dr. Hudnutt?

A. Yes, sir.

Q. Where did he ask you?

A. He told me that he was pretty near losing the ground and in conversation I told him that—

Q. I want to know if he came there to your house and asked you to go down?

A. He didn't come to the house. We met down at Nespelem at the post office.

Q. And he told you that they were contesting the ground on account of the fact that there was no gold on it?

A. Yes, sir.

Q. And he told you to go down there and see if you could find gold?

A. I told him I knew there was some and he says I want you to go down and see whether there is any there yet.

Q. And you went down there with the object of finding gold if there was any there?

A. To see whether there was still any there.

Q. You confined your operations to the Nespelem river?

A. Yes, sir.

Q. You did not go up on the Wickman claim?

A. Yes sir, and even the Columbia river.

Q. I mean the Wickman claim itself?

A. I know that there is no gold on top in the grass roots. I did not prospect the surface down on top of the bench.

Testimony of Joseph Kroll.

Q. You know where the Wickman claim is, don't you?

A. Yes, sir.

Q. You mean by that that the place to look for gold on the Wickman claim would not be on the top surface here?

A. No, sir.

Q. You didn't think you could find any gold up here?

A. No, sir.

Q. You didn't think you could find any gold any wheres on the Wickman claim by ordinary methods or digging holes except to begin down on the strip below the Wickman claim, between the Wickman claim and the river?

Mr. BLAIR: I move to strike the last two questions on the ground because they call for a mere conclusion of the witness without reference to his knowledge.

A. No, sir.

Q. That is, that the only place that you from your examination thought that you could find gold on the Wickman claim would be down below the claim and between it and the Columbia river?

A. Yes, sir.

Q. On what we call the excluded strip?

A. Yes sir. There was a gulch or two run into the Wickman claim and I went in those gulches.

Q. You didn't pan up on the claim?

A. I did not run this line (indicating) so I might have been on the claim. I was along in here somewhere (Indicating), I went up a couple of gulches and panned

Testimony of Joseph Kroll.

and got results, though I did not run this line from corner No. 3 to corner No. 4 of the Wickman.

Q. That is 1500 feet?

A. Yes, sir.

Q. You don't know whether your investigation run up on it or not?

A. No.

Q. You didn't pan along this ditch on the upper part of the Wickman?

A. It would not be any use.

Q. You mean by that that you could not find any gold up there?

A. No.

Q. How deep would you think you would have to go for gold on the Wickman claim if there was any gold there?

Mr. BLAIR: I object to the question as calling for a mere guess upon the part of the witness and as not cross examination of any matter that has been entered into by the defendant.

A. Down to bedrock.

Q. And you could not get any gold by digging upon the surface of the Wickman claim before you struck bedrock?

A. No, sir.

Q. Do you know where bedrock is on the Wickman claim?

A. I do know where it runs down to the Columbia river.

Testimony of Joseph Kroll.

Q. You know where it is on the Columbia river, but you don't know where it is on the Wickman claim?

A. I do not.

Q. When did you say you were first on these claims?

A. On the ground?

Q. Yes, sir.

A. Oct. 13, 1898.

Q. Didn't you state in your direct examination that it was Oct. 15, 1898?

A. The 13th, 14th and 15th.

Q. What were you doing?

A. I made them three claims.

Q. What?

A. Made locations of the three claims.

Q. When did you first go on the ground, that is, the first time?

A. Oct. 1st.

Q. That is the first time you went on the ground, October 1st?

A. Yes, sir.

Q. Were you alone?

A. Yes, sir.

Q. Did you stay on the ground?

A. Yes, sir.

Q. I mean did you stay there at the mouth of the Nespelem?

A. Yes, sir.

Q. Where did you do any panning on the trip?

A. I panned along down the Nespelem and down the

Testimony of Joseph Kroll.

Columbia river about two miles, between 2 and 3 miles down the river below the mouth of the Nespelem.

Q. But you did not pan on these claims except on the Nespelem river?

A. Yes, I did first before I found the difference.

Q. What do you mean by "before I found the difference"?

A. I didn't know the character of the deposits. Where there is a glazier deposit, or a gorge shoved out—I say a gorge shoved the gold out of the rock here and pushed it out on the banks it would be laying on top.

Q. Where did you locate your 3 claims. Look at exhibit No. 4 and tell me where you located your claims.

A. I butted them against the Nespelem and run them straight in that direction (indicating). There is the falls and the dam. I started as near as I can,—then bushes don't show. There is some bushes here back there and I think I started in there somewhere (indicating).

Q. They all butted on the Nespelem river?

A. Yes sir, and run out straight from there.

Q. Run out north?

A. Yes, sir.

Q. Now how many colors do you think you got at that time when you panned down the river?

A. Last October?

Q. No, in 1898?

A. Well, I never counted the colors.

Q. You do not remember precisely what you did find, do you?

Testimony of Joseph Kroll.

A. I could find gold, actually there was a string in the pan probably six inches of this flour gold—it is just like flour and you can see a yellow streak, but you can not count the colors.

Q. They were too small to count with the eye?

A. Too small to count.

Q. Now hydraulicking does not save that kind of gold does it?

A. Yes, sir.

Q. Don't it blow it away?

A. No sir, they have got the copper plate machinery now at the bottom of the last riffle to save all of that fine gold.

Q. Now when you were there you panned also on the Columbia on that trip, didn't you?

A. Yes, sir.

Q. Did you do this panning before or after you located the claims?

A. Before.

Q. How long before?

A. Oh half a day or such a matter.

Q. Half a day?

A. Yes, sir.

Q. Then you stayed on the claims you said from Oct. 15th how long—to Nov. 11th?

A. Nov. 11th.

Q. And were you there alone during that period?

A. Yes, sir.

Q. What were you doing there?

A. I was camping there with my horses.

Testimony of Joseph Kroll.

Q. Just simply camped there during that period?

A. Yes, sir.

Q. Didn't do any more mining?

A. Yes, I done some prospecting.

Q. Where?

A. On the claims that I located, and also rode up into the hills looking for quartz claims.

Q. Your principal occupation after you had located the claims was going up into the hills for quartz, wasn't it?

A. Well sometimes when the horses was close to camp I would take a horse and ride around and look for quartz, but if the horses wandered off quite a ways, wasn't in sight, I panned on my locations.

Q. You afterwards abandoned these claims?

A. Yes, sir.

Q. Will you let me take that book you are reading from, or rather not reading from, but you have been referring to it.

(Witness hands over book)

Q. I see that you have got a long list of names here kept about in the same manner as you have put in the Sunrise, Monday and Ditto. You have got a string of names, Troy Lode, Maybe Lode, Hope Placer, Olive Placer, Occidental Placer, Sunrise Placer, Monday Placer, Ditto Placer, Grandview Lode, Short Lode, Grand Coulee Lode, Iron Crown Lode and Libby Lode. You made all those locations there at that time?

A. Yes, sir.

Testimony of Joseph Kroll.

Q. The Occidental, Sunrise, Monday and Ditto—the Occidental was made the first of October, wasn't it?

A. Yes, sir.

Q. And the Sunrise the 13th?

A. Yes, sir.

Q. The Monday on the 13th?

A. Yes, sir.

Q. The Ditto on the 13th?

A. Yes, sir.

Q. And Grandview on the 15th of October?

A. Yes, sir.

Q. Spot on the 26th of October?

A. Yes, sir.

Q. And Grand Coulee on the 26th of October?

A. Yes, sir.

Q. The Iron Crown and Libby on the 5th of November, that is right isn't it?

A. Yes sir—that might be the 11th.

Q. Did you abandon them all?

A. No, sir.

Q. You kept some of them, did you?

A. Yes, sir.

Q. Which ones did you abandon?

A. The Iron Crown Lode and Spot.

Q. Where were they?

A. They are at the mouth, about 6 miles from the mouth of the Nespelem.

Q. They are lode claims?

A. Yes, sir.

Q. You abandoned all these placer claims?

Testimony of Joseph Kroll.

A. Yes, sir.

Q. I don't know whether I named the Spot in reading them, in reading the last few, but there was such a name as that lode located?

A. Sir—I will say this I relocated them afterwards, the claims and renamed them since.

Q. And have them yet?

A. Yes, sir.

Q. Now where were those claims, other than the Sunrise, Monday and Ditto?

A. The Troy Lode was about two miles west from Keller and the Maybe Lode was joined with the Troy Lode. The Hope Placer and the Olive Placer was at the mouth of the Iron creek on the San Poil river and the Occidental was a lode about three miles below the mouth of the Nespelem river running down to the bottom of the Columbia river, and the Grandview and Spot was about six miles from the mouth of the Nespelem in a northerly direction and the Grand Coulee and Iron Crown Lodes are also there, there was a group, but I abandoned all but the three, after I prospected and knew then that it was not worth while to work in there, I abandoned all the groups but them three.

Q. Whereabouts on the Nespelem river did you pan last October?

A. I panned about 100 yards below the falls, the lower falls of the Nespelem river down at the mouth of the Nespelem river.

Q. How many places?

A. About 5.

Testimony of Joseph Kroll.

Q. And then your other panning was on the Columbia down below the claims?

A. Yes, sir.

Q. You say you found colors in every one, did you say on the Nespelem?

A. Yes, sir.

Q. But some of the pans were blank?

A. There was three blanks. I don't exactly remember. I think they were all on the Nespelem.

Q. Well these colors that you found on the Nespelem, were they very fine ones were they not, fine flour colors, flour gold?

A. No, they was bigger than the Columbia river colors.

Q. But the Columbia river is very fine?

A. Very fine flour gold.

Q. Could you see these colors with the naked eye that you found on the Nespelem?

A. Yes, sir.

Q. If you had panned down the Nespelem and hadn't found any colors at all in the pans that you took down there you would not consider it valuable as placer ground, would you?

A. No, sir.

Q. And because you found some gold down there you do not mean to say that you now consider it valuable as a placer mine?

A. Yes, sir.

Q. What do you mean by "valuable as a placer mine"?

Testimony of Joseph Kroll.

A. I mean when all circumstances in favor of the locality, dumping ground and water.

Q. Where is the dumping ground you refer to?

A. Down to the Columbia river.

Q. You think you can dump in the Columbia river, do you?

A. The space.

You would not have to—the space is 300 or 400 feet from the low water mark to the high water mark on the Columbia river.

Q. You think you have a right to dump in there, do you?

A. Yes, sir.

Q. Do you think you have a right to dump in the river?

A. This is not in the river.

Q. Now referring to defendant's exhibit "U", how many pans did you say that came out of?

A. Eight pans and three was blank, consequently there was five pans that that came out of.

Q. Did any of this come from the Columbia river?

A. A part of it and part from the Nespelem, five from the Nespelem and three from the Columbia.

Q. Then some of this came out of the Columbia river, did it?

A. Yes sir, about 3 pans.

Q. You don't know what part of it, do you?

A. What part?

Q. You don't know how much of the gold in this bottle if there is any gold?

Testimony of Joseph Kroll.

A. Yes, I can pick out every color there belonging to the Columbia river and to the Nespelem river if I had them in a pan.

Q. If you had them in a pan.

A. Yes, sir.

Q. But now you can not, bottled up in this shape?

A. No, you can not distinguish them.

Q. How much is the value of the gold in the bottle do you say or did you testify?

A. About half a cent.

Q. You think there is a half a cent of gold in the bottle do you?

A. Yes, sir.

Q. You said it was almost impossible you thought to pan down the river and not find gold. You mean by that that it is possible, you may pan down the river and not find any gold?

A. There is a possibility, but I could not pan down there without finding something.

Q. How many colors are there in this bottle, Exhibit "U"?

A. Somewhere between 30 and 50 colors.

Q. You say there are in here between 30 and 50 colors?

A. Yes, sir.

Q. And you think that that would make half a cent, somewhere near that?

A. Yes, sir.

Q. Well, you testified in your direct examination that 45 colors would make a cent?

Testimony of Joseph Kroll.

A. Yes, sir.

Q. What do you mean by that?

A. That depends on what colors, on what the size of the colors are.

Q. Do you call those colors in this exhibit "U" big or little?

A. Sir?

Q. Are those large colors in this exhibit "U" or small colors?

A. Small colors.

Q. You say small?

A. Yes, sir.

Q. Did you bottle them up?

A. Sir?

Q. Did you put them in this bottle?

A. Yes, sir.

Q. When?

A. Wll it was about the next day after I prospected last October.

Q. Have you had them ever since?

A. Yes, sir.

Q. Has anybody else had them?

A. No, sir.

Q. When did you abandon these claims?

Mr. BLAIR: Referring now to the placer claims?

Mr. AVERY: Referring to these claims that were located where he says the Wickman and Peabody are?

Q. Don't you know about when it was, Mr. Kroll, I don't care to know the precise date?

A. About the 21st of June, 1898 when I quit.

Testimony of Joseph Kroll.

Q. You hadn't located them until that?

A. No sir. I located them in 1898 and I abandoned them in 1899.

Q. What?

A. I abandoned them in June 1899.

Q. Where were you between Oct. 15th 1898 and June 1899?

A. I was along the Nespelem river and also the San Poil river.

Q. Locating claims?

A. Prospecting.

Q. And you located a good many claims up in that locality?

A. Yes, sir.

Q. All of them you abandoned except three?

A. After it was determined that they were not worth working further why I abandoned them.

Q. Did you locate any more claims than those mentioned in the book there?

A. Yes, sir.

Q. What other claims did you locate—got another list have you?

A. Scattered all through now. I located the Jesse claim on July 12, 1899.

Q. What is the next one?

Mr. BLAIR: I object to this question of course as being immaterial.

A. The New York on July 26, 1899.

Q. What other?

A. The Nellie.

Testimony of Joseph Kroll.

Mr. BLAIR: I object to all this.

A. No date.

Q. What else?

A. The Wall Street, July 26, 1899.

Q. What else?

A. The Ingersoll on September 15, 1899.

Mr. BLAIR: I object to all these questions as being immaterial and irrelevant.

A. The Argus on Sept. 14, 1899.

Q. What else?

A. The Argus No. 2 on Sept. 25, 1899.

Q. What else—just give me—I will not go any further if you will tell me how many there were, the number of them without giving their names?

A. Oh there might be 8 or 10 more.

Q. None of them were in close to these Wickman and Peabody were they?

A. The majority was within 5 or 6 miles.

Q. I mean none of them were immediately there?

A. No, sir.

Q. Around there?

A. No, sir.

Q. When you located this ground that you say is now occupied by the Wickman and Peabody placers, or part of the ground, did it occur to you that there was pretty good water power right there—did it occur to you when you located the Monday, the Sunrise and Ditto placers that there was pretty good water power right there?

Testimony of Joseph Kroll.

Q. That was one of your reasons for locating it, wasn't it?

A. Yes, sir.

Q. And if there was any gold there that would be the most advantageous place of any that you located, wouldn't it?

A. Yes, sir.

Q. I mean because of the water?

A. Yes, sir.

Q. Now referring to the agricultural land around there, you say that there is agricultural land around there, isn't there more or less?

A. Up the river, up above the mouth of the Nespelem there is.

Q. How about the Wickman and Peabody if water was put on them, up from the river I mean, it is on a bench up there, isn't it?

A. Yes, sir.

Q. The upper part of the Wickman and Peabody is kind of bench land?

A. Yes, sir.

Q. Water put on that would raise agricultural products, wouldn't it?

A. Too coarse and sandy.

Q. What is that?

A. Too coarse and sandy.

Q. You don't think you could raise anything on there?

A. No, sir.

Q. How about the country—isn't there some nice agri-

Testimony of Joseph Kroll.

cultural country between there and Nespelem—between these claims and Nespelem?

A. I don't understand you.

Q. What is that?

A. I don't understand the question.

Q. Is there any agricultural country between Nespelem town—

A. The town?

Q. And these claims?

A. Yes, sir.

Q. There is, isn't there?

A. Yes, sir.

Q. That ground would raise fruit and grains with irrigation?

A. They don't raise any fruit there.

Q. I know, they don't raise fruit in a good many places where they can raise it?

A. They raise gardens there.

Q. Garden truck?

A. Yes, sir.

Q. And use water to do it?

A. In some places they are using it to advantage.

Q. It is better with water of course than without?

A. Yes, sir.

Q. Where are these places you refer to, between Nespelem and these claims?

A. No sir, they are at the Berry Ferry, 10 miles up the Columbia river from the mouth of the Nespelem.

Q. I am referring particularly to the land between Nespelem and the claims?

Testimony of Joseph Kroll.

A. They don't irrigate.

Q. Don't they have to?

A. No, sir.

Q. Wouldn't it make it any better if they irrigated it?

A. Yes, sir.

Q. Now you say there is an Indian claim or ranch right east of these claims?

A. Up the Columbia river.

Q. That is up the river?

A. Southeast.

Q. Not very far is it?

A. Oh it joins.

Q. It joins these claims, doesn't it?

A. Yes sir, they have a fence around it, the agricultural land, they have got a fence around a good deal more, for pasture.

Q. And went a lot further?

A. Yes, sir.

Q. Well he pastures in there, does he?

A. Yes, sir.

Q. What kind of grass is the pasture grass?

A. Kind of sheep grass.

Q. Sheep grass on these claims, isn't it?

A. Yes, sir.

Q. You have seen them pasturing on them, haven't you?

A. There is stock running around loose.

Q. And they graze on this Wickman and Peabody claims?

A. Yes, sir.

Testimony of Joseph Kroll.

Q. About the same kind of grass as it is on this Indian claim east?

A. Well not as good.

Q. Not as good as the Indian claim?

A. No.

Q. What is the nature of the soil on this Indian claim? that bounds these claims, the Indian lot that bounds these placer claims on the east—what is the kind of soil?

A. There is a spring up above there and some black soil by the spring close to his house.

Q. Do they use any water over there?

A. Yes, sir.

Mr. BLAIR: You mean water to irrigate?

Mr. AVERY: Yes.

A. No, he don't. He had enough water, he got his spring—enough for his own use.

By Mr. AVERY: That is all.

REDIRECT EXAMINATION.

By Mr. BLAIR:

Q. When you located the Sunrise, Monday and Ditto claims did you do any panning on the property?

A. Yes, sir.

Q. Now you stated that you abandoned these lode claims and the placer claims. Why did you abandon the placer claims?

Mr. AVERY: I object to that as he has already stated both on direct examination and on cross examination.

Q. You may answer.

A. I found in order to get that water out of the Nes-

Testimony of Joseph Kroll.

pelem, after examining the ground that I had to get this water out through a hard granite point, and there I quit.

Q. Why did you quit?

A. Because I was not able to blast. I could not connect—with assistance probably I could have gone in and dug a ditch in the soil, but we could not afford to blast in the hard granite.

Q. Too expensive?

Mr. AVERY: I object to that as leading?

A. Yes, sir.

Q. In regard to the Wickman and Peabody placers state if you know what the fact is with reference to the surface of these placers being or not being cut with coulees and ravines?

A. Well they are cut by gullies.

Q. This garden truck that you say is grown around Nespelem, in what quantity is it grown by any of those people up there, just for their own sole use?

A. Very little.

Q. This coarse grass or whatever it is you say is on the Wickman and Peabody, is it green grass?

A. It is green grass when it first comes up in the spring, but after a month it is dry.

Q. What is it the rest of the time?

A. Well the time it is ready to dry it is all gone, dries away.

Mr. BLAIR: That is all.

By Mr. AVERY:

Q. How much time does it take to locate a claim?

Testimony of Joseph Kroll.

A. Well it took me a week to locate the Occidental claim. There was a cliff about 50 feet right straight up.

Q. How long did it take you to locate the three claims, the Ditto, Sunrise and Monday?

A. Oh less than half a day if I was to work right along.

Q. All of those other claims of these two or three dozen that you located, did you abandon them because you had to blast granite to get the water?

Mr. BLAIR: I object to that because of the incorrect assumption made in the question. The witness cannot fairly answer the question because he did not testify about two or three odd dozen.

Q. You may answer.

A. That is sort of impossible to answer that question—the question in reference to the lode claims. I have abandoned the placer claims on account of the water.

Q. You what?

A. I abandoned the three placer claims on account of I could not get the water on them to work them.

Q. Well you knew how hard it would be to get water when you located this Ditto, Monday and Sunrise, didn't you?

A. I didn't take notice of the granite cliffs.

Mr. AVERY: That is all.

Mr. BLAIR: That is all.

Witness excused.

No. 1317

In the United States Circuit Court for the Eastern District of Washington, Eastern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

United States of America.

State of Washington.

County of Spokane.

} ss

I, B. B. Adams, the Examiner, Specially appointed by order of the above entitled Court, in said cause, do hereby certify that the foregoing testimony of the respective witnesses named therein, to-wit:—F. M. Goodwin, J. W. Comerford, M. F. Webster, G. S. Wickman, J. R. Gilfellen, Charles M. White, Thomas B. Early, F. O. Hudnutt, L. K. Armstrong, H. V. Stevenson, and Jos. Kroll, was taken before me at the times and places mentioned therein, pursuant to agreement between, and notice to the attorneys for the respective parties to the action; that before testifying each of the several witnesses was by me separately and duly sworn to tell the truth, the whole truth and nothing but the truth, and that the foregoing testimony of each witness as named was, under my direction, taken down by E. R. Lindsey, a skillful stenographer, elected by me, and approved by both parties hereto, and that the testimony of said witnesses so taken by the stenographer was thereafter reduced to typewriting, and by the consent of the parties

the reading of the said testimony by the respective witnesses and the signatures of the said witnesses to their respective typewritten testimony was by the respective counsel waived.

The taking of said testimony was commenced on the 13th day of July, 1909, and on the 16th of July the same was continued until the 20th of July, and thereafter said examination took place every day until, and including, the 23rd day of July, 1909, when said examination by the consent of counsel was continued subject to the call of the examiner and consent of counsel; that thereafter on the 18th day of December, 1909, at the request of both parties, said examination was continued and completed; that there was introduced in evidence in behalf of the complainants exhibits 1 to 12 inclusive and in behalf of the defendants exhibits A to U inclusive, which constitutes all of the exhibits introduced in this case.

I further certify that said exhibits at all times when not being used in the examination of witnesses were in the custody of the clerk of this court, and that during the month of 1909, when said court was removed from the Hutton building in the city of Spokane to the new Federal building in said city, that in some manner unknown to the clerk defendant's exhibit A, a small round bottle containing two small pieces of gold and some black sand was broken on the side and some of the black sand lost; that defendant's exhibit F which was a half pint flat bottle, containing black sand and other particles was entirely broken but said pieces of said bottle and the sand contained therein were preserved

by the clerk, and that each of said bottles are enclosed in envelopes, marked respectively defendant's exhibit A and defendant's exhibit F.

That the said several exhibits which accompany this testimony were offered in evidence by the respective parties as noted therein.

WITNESS my hand this 6th day of January, 1910.

(Signed) B. B. ADAMS,
Examiner.

Endorsements: Written testimony taken before Special Examiner.

Filed January 6, 1910.

FRANK C. NASH, Clerk.

No. 1317.

In the Circuit Court of the United States, Eastern District of Washington, Eastern Division.

OSCAR CAIN, U. S. Atty and E. C. MACDONALD,
Asst. U. S. Atty., for Complainant.

BURCHAM & BLAIR, for Defendant.

UNITED STATES OF AMERICA,
Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

OPINION.

RUDKIN, District Judge. This is a suit in equity by the government to set aside the patents for the "Pea-

body and "Wickman" placer claims, situate in the Moses Mining district of Okanogan county, Washington, on the ground that the claims do not contain deposits of gold, and that the patents were obtained through false and fraudulent representations. The history of the two claims is as follows:

The Peabody placer, containing 157.173 acres was first located on the 16th day of June, 1901, by F. O. Hudnutt and seven others; the location notice was filed for record in the office of the County Auditor of Okanogan county on the 8th day of July, 1901; the claim was relocated on the 1st day of July, 1902, by the defendant company, as successor in interest to the original locators; the notice of re-location was filed for record in the same office on the 10th day of July, 1902; application for patent was filed in the local land office at Waterville on the 26th day of November, 1902; the Receiver's final receipt or certificate of entry was issued on March 11th, 1903, and patent was issued by the complainant on the 31st day of October, 1904.

The Wickman claim, containing 99.540 acres, was located by T. B. Early and four others on the 14th day of June, 1902; the location notice was filed for record in the office of the County Auditor of Okanogan county on the 3rd day of July, 1902; application for patent was filed in the land office at Waterville by the defendant, as successor in interest to the original locators, on the 26th day of October, 1902; the Receiver's final receipt or certificate of entry was issued March 11th, 1903, and patent was issued by the complainant on the 31st day of October, 1904.

The rules of law governing suits of this kind are well settled, and no useful purpose would be subserved by a review of the voluminous conflicting testimony taken before the Special Master. Four witnesses examined the claims at the instance of the complainant, and their testimony shows that the claims contain no deposits of gold, but are chiefly and highly valuable for other purposes. On the other hand, seven witnesses for the defendant have testified that they have found gold in considerable and paying quantities on all parts of these claims, and I might add, at many other points covering a wide range in that vicinity. It is a significant fact, however, that although more than eight years have elapsed between the date of the original location of the Peabody claim and the date of the last hearing before the Master, the net result of all mining operations on the two claims is a few fine particles of gold in two or three small phials containing water and black sand. The claims extend for more than a mile on either side of the Nespelem river from its confluence with the Columbia to a point above the falls; in crossing them the river falls upwards of one hundred and fifty feet, and the claims are valuable for both power and agricultural purposes.

After considering fully the location and character of the claims, the haste with which they were pressed to patent, their almost entire abandonment since that time, and all the facts and surrounding circumstances, I am fully convinced that the claims were initiated and perfected in fraud of the rights of the complainant, and equity and good conscience demand that patents so

obtained should be set aside and annulled. Let a decree be entered accordingly.

Endorsements:

Opinion.

Filed May 27, 1911.

FRANK C. NASH, Clerk.

No. 1317.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

DECREE.

This cause came on to be heard on the day of May, A. D. 1911, upon the report of B. B. Adams, Examiner heretofore appointed by this Court to take, transcribe and report the evidence and testimony in said case, and the Court having read and considered said evidence and the briefs of counsel for the respective parties hereto and being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED

as follows, to-wit:

That those certain patents (being described in the bill of complaint herein), issued to the defendant Multnomah Mining, Milling and Development Company, a

corporation, by the complainant, United States of America, on or about, respectively:

July 10, 1902, covering and purporting to convey the following described premises, to-wit:

Beginning at Corner No. 1, identical with corner No. 1 of the location. A pine post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ inches square, set 2 feet in the ground, with mound of earth, scribed 1-680 U. S. L. M., No. 1, Moses Mining District; Bears south 26 degrees 4' east 115.95 feet. Thence N. 73 degrees 43' W. V. 22 degrees 15' E. 1736. To cor. No. 2. A cottonwood post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ inches square. Thence N. 59 degrees 46' W. 3572. To cor. No. 3. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr., Thence S. 48 degrees 30' W. 1782.5. To cor. No. 4, A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence S. 85 degrees 03' E. 291.2. To cor. No. 5. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence S. 6 degrees 42' E. 150. Intersect north bank Nespelem River. 1000. Intersect south bank Nespelem river 1007.0. To cor. No. 6. A fir post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence N. 88 degrees 34' E. 2678. To cor. No. 7. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. The northwest corner of Eliza Ricard's fence, bears S. 75 degrees west 2.5 feet. Thence S. 75 degrees 43' E. 2687.8. To corner No. 8. A post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence N. 37 degrees 35' E. 470. Intersect south bank of Nespelem river .510. Intersect north bank of Nespelem river 652.7. To cor. No. 1 and place of beginning, containing 157.173 acres. The above described premises being known and designated as the "Peabody Placer" mining claim. The name of the ad-

joining claims are the Wickman Placer on the north and west, and an unknown lode claim on the east.

June 14, 1902, covering and purporting to convey the following described premises, to-wit:

Beginning at corner No. 1, identical with cor. No. 2, Peabody Placer survey No. 680. Multnomah, Mining, Milling & Development Company, claimant. A cottonwood post $4\frac{1}{2}$ in. sqr., $2\frac{1}{2}$ ft. above ground, with mound of earth scribed 1-686 in addition to the original markings, U. S. L. M., No. 1, Moses Mining District, bears S. 71 degrees 30" E. 1816 feet. No bearing objects available. S. E, Loc. cor. identical with corner No. 1. Survey No. 680 and corner No. 2 survey No. 680. A post $4\frac{1}{2}$ in. sqr., $2\frac{1}{2}$ feet above ground, set in mound of earth N.E. loc. cor. No. 1 bears N. 26 E. 392 feet. Thence N. 50 5' W. Var. $22\frac{1}{4}$ E. 6481.08. To cor. No. 2. A granite stone 6"-9"-24' long set 12 inches in the ground, chiseled 2-686. Thence S. 44 48' W. 600. To cor. No. 3. A cedar post $4\frac{1}{2}$ in. sqr., $4\frac{1}{4}$ feet long, set 2 feet in the ground, scribed 3-686. Thence S. 30 58' E. 3028.71. To cor. No. 4 on line 3-4 survey No. 680 at N. 48 30' E. 782.5 feet from cor. No. 4. A cedar post $4\frac{1}{2}$ in. sqr. $4\frac{1}{2}$ feet long, set 2 feet in the ground. Thence N. 48 30' E. Along line 4-3 Survey number 680, Peabody Placer, 1000. To cor. No. 5. Identical with cor. No. 3. Survey number 680. A cedar post $4\frac{1}{2}$ in. sqr. $4\frac{1}{2}$ feet long set in the ground with mound of earth, scribed 5-686. Thence S. 59 46' E. Along line 3-2, Survey No. 680. 2050. Intersect ditch 4 feet wide. Course 50' W. 3572. To cor. number 1 and place of beginning contain-

ing 99.540 acres; said above described premises being known and designated as the "Wickman Placer" mining claim. The name of the adjoining claim is the Peabody Placer, Survey No. 680, on the South. This claim is located about three miles south of the Nespelem post-office, Okanogan County, Washington. Adjoining claim is the Peabody Placer on the South:

Are, and each of said above described patents is void and of no force or effect, and they are, and each of them is, canceled, set aside and held for naught, and the cloud on complainant's title to said lands, real estate and premises occasioned thereby is hereby cleared: and it is further

ORDERED, ADJUDGED AND DECREED that said defendant, nor any person or corporation acquiring any right, title or interest in and to said lands subsequent to the filing of the *Lis Pendens* herein, to-wit: March 14, 1908, has any right, title, interest or estate in said lands, real estate and premises, nor in any part or parcel thereof, and that the complainant, the United States of America, is the owner of, and entitled to the possession of, said lands, real estate and premises, and each and every part and parcel thereof, the same being situate in the Moses Mining District, Okanogan County, Washington, at the point where the Nespelem river joins the Columbia river;

That the complainant do have and recover from the defendant its costs and disbursements herein incurred.

Done in open Court this 17th day of July, A. D., 1911.

(Signed) FRANK H. RUDKIN, Judge.

To the foregoing decree the defendant excepts and an exception is allowed.

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Final Decree.

Filed July 17, 1911.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

IN EQUITY NO.

ASSIGNMENT OF ERRORS.

And now on the 9th day of September, 1911, comes the said defendant by A. G. Elston, its solicitor, and says: that the decree in said cause is erroneous and against the just rights of said defendant for the following reasons:

I.

Because the evidence shows that title in and to the Peabody and Wickman placer claims was initiated and perfected in good faith in the manner and in accordance with the mining laws and the rules and regulations of the Department of the Interior governing the acquisition of title to public lands valuable for their deposits.

II.

Because the evidence showed, that the said placer

claims were appropriated from the public domain, subject to entry under the mining laws and the rules and regulations governing the appropriation of lands valuable for placer deposits, in good faith for the gold therein contained.

III.

Because the evidence showed that a bona fide discovery of gold in sufficient quantity to warrant a reasonable prudent man in expending his time and money in the development of the placer claims had in truth and in fact been made prior to the application for United States Patent thereto.

IV.

Because the evidence showed that since patent to the said placer claims were secured from the United States Government the plaintiff has been as diligent as its financial conditions would permit and the magnitude of the prospect allow under its financial circumstances, in the development of the said placer claims in the manner in which they will have to be developed, that is by hydraulic placer mining.

V.

Because the preponderance of the evidence clearly shows that the claims do contain deposits of gold and are highly valuable for their deposit of placer gold.

VI.

Because the court erred in finding that the net result of all mining operations of the two claims were a few particles of fine gold in two or three small vials containing water and black sand.

VII.

Because the court erred in finding that the claims are chiefly valuable for power and agricultural purposes.

VIII.

Because the court erred in concluding, from the location and character of the claims and the haste to which they were pressed to patent, that the claims were initiated and perfected in fraud of the rights of complainant.

IX.

Because the court erred in finding that the claims had been almost entirely abandoned since patent.

X.

Because the court erred in finding that equity and good conscience demanded that patents obtained should be set aside and annulled.

XI.

Because the court erred in that it did not hold that the complainant had failed by the preponderance of evidence to prove that the Multnomah Mining, Milling and Development Company had defrauded complainant of said lands or that there was any fraud perpetrated or attempted to be perpetrated upon the United States by defendant.

XII.

Because the court erred in not finding that there was an actual discovery of gold on the claims.

XIII.

Because the court erred in not finding that the ground covered by the patents sought to be cancelled was mineral in character and valuable for its placer deposits.

XIV.

Because the court erred in not finding that the title of the defendant in and to said placer claims were initiated and perfected in good faith in accordance with the mining laws and the rules and regulations of the Department of the Interior.

XV.

Because the court erred in not dismissing the bill of complainant.

WHEREFORE the defendant prays that said decree be reversed and that the said court be directed to dismiss the bill of complainant herein.

(Signed) A. G. ELSTON,
Solicitor for Defendant.

Endorsements:

Assignment of Errors.

Filed Sept. 9, 1911.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

IN EQUITY NO. 1317.

PETITION FOR APPEAL TO THE UNITED
STATES CIRCUIT COURT OF
APPEALS.

The above named defendant conceiving itself aggrieved, by the decree made and entered on the 17th day of July, 1911, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal will be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

(Signed) A. G. ELSTON,
Attorney for Plaintiff.

Dated this 9th day of September, 1911.

The foregoing claim of appeal is allowed.

Dated this 9th day of September, 1911.

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Petition for Appeal and Order allowing Appeal.

Filed February 9, 1911.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY,

Defendant.

ORDER.

On reading and filing defendant's petition for an appeal, it is hereby ORDERED that an appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the order and decree heretofore rendered, on the 17th day of July, 1911, in favor of the complainant and against defendants.

It is further ORDERED that a certified transcript of the record, testimony, exhibits, affidavits and all proceedings herein upon which said order and decree was made be forthwith transcribed to the said Circuit Court of Appeals.

It is further ORDERED that the bond on appeal be fixed at a sum of five hundred dollars.

Dated at Spokane, Washington, this 11th day of September, 1911.

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Order allowing Appeal.

Filed October 2nd, 1911.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY,

Defendant.

BOND.

KNOW ALL MEN BY THESE PRESENTS, that we, the Multnomah Mining, Milling and Development Company, a corporation, organized and existing under and by virtue of the laws of the State of Washington, as principal, and the Fidelity & Deposit Company, of Maryland, a surety bonding company, authorized to do business in the State of Washington, and under the federal laws, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred (\$500.00) Dollars, to be paid to the said United States of America, its United States District Attorney or United States Treasurer, to which payment well and truly to be made we bind ourselves, our successors, administrators and assigns, jointly and severally, by these presents.

WHEREAS, lately at a circuit court of the United States for the Eastern District of Washington, Eastern Division, in a suit depending in said court, between the United States of America, plaintiff, and the Multnomah Mining, Milling and Development Company, a corporation, defendant, a decree was rendered against the Multnomah Mining, Milling and Development Company, and the said Multnomah Mining, Milling and Development Company having obtained an appeal, and filed a copy thereof in the office of the Clerk of said court, to reverse the decree in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, State of Cali-

fornia, in said Circuit on the.....day of....., 1912, having been issued.

Now, therefore, the condition of the above obligation is such, that if the Multnomah Mining, Milling and Development Company shall prosecute its appeal to effect and shall answer all damages and costs imposed if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed with our seals and dated this 2nd day of October, the year of our Lord one thousand nine hundred and eleven.

(Signed) MULTNOMAH MINING, MILLING
& DEVELOPMENT CO.

By DR. F. O. HUDNUTT,
General Manager.

Sealed and delivered in the presence of:

(Signed) M. B. BUSHNELL,

(Signed) M. A. CAMPBELL.

Approved by:

(Signed) FRANK H. RUDKIN,

U. S. District Judge.

Dated this 2nd day of October, 1911.

Endorsements:

Appeal Bond.

Filed Oct. 2, 1911.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY,

Defendant.

CITATION (Lodged Copy).

The President of the United States, to the United States of America, the complainant above named:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within Thirty (30) days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Eastern District of Washington, Eastern Division, wherein the Multnomah Mining, Milling and Development Company, a corporation, are appellants, and the United States of America, is respondent, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 3rd day of October, A. D. 1911, and of the Independence of the United States the one hundred and thirty-fifth.

(Seal.)

(Signed) FRANK H. RUDKIN,
United States District Judge.

Attest: FRANK C. NASH,

Clerk of said Court.

Endorsements:

Citation (Lodged Copy).

Filed Oct. 2nd, 1911.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY,

Defendant.

ORDER.

Upon motion of the appellant it is hereby ordered that the exhibits filed in the trial of the above entitled cause in the United States Circuit Court, be by the Clerk of the said Court transmitted with the transcript on appeal to the United States Circuit Court of Appeals, at San Francisco, California.

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Order to send Original Exhibits.

Filed October 19, 1911.

FRANK C. NASH, Clerk.

In the District Court of the United States, Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

NO. 1317.

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL.

To the Clerk of the above-entitled Court:

You will please make a transcript of the record for use on appeal in the above-entitled cause as follows:

1. Bill of Complaint.
2. Answer to Bill of Complaint.
3. Replication.
4. Opinion of the Court on the Merits.
5. Final Decree.
6. Petition for Appeal.
7. Order Allowing Appeal.
8. Assignment of Errors.
9. Bond on Appeal.
10. Original Citation issued in said Cause.
11. Deposition of Arthur J. Collier.
12. Testimony on file in said Cause.
13. Order to send to C. C. A. Original Exhibits.
14. Stipulation dated Oct. 27, 1911, extending time for printing record 60 days.
15. Stipulation dated Jan. 2, 1912, extending time for printing record for 90 days.

16. Stipulation dated April 1, 1912, extending time for printing record to August 10, 1912.

17. Stipulation extending time for printing record to October 30, 1912, dated September 9, 1912.

18. Stipulation extending time for printing record until December 31, 1912, dated October 30, 1912.

19. Stipulation extending time for printing record to January 30, 1913, dated December 30, 1912.

20. Stipulation extending time for printing record until March 15, 1913, dated January 23, 1913.

(Signed) A. G. ELSTON,
Solicitor for Defendant.

Endorsements:

Praecipe for Transcript of the Record.

Filed October 2, 1911.

FRANK C. NASH, Clerk.

No. 1317.

In the District Court of the United States, Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a Corporation,

Defendant.

CLERK'S CERTIFICATE TO TRANSCRIPT OF
RECORD.

UNITED STATES OF AMERICA, }
Eastern District of Washington, } ss

I, W. H. HARE, Clerk of the District Court of the

United States for the Eastern District of Washington, do hereby certify the foregoing printed pages, numbered from one to 881 inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings as called for by the appellant in his praecipe for a transcript of the record herein as the same appears on page 880 of this printed record, and as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the order, judgment and decree of the Circuit Court of the United States for the Eastern District of Washington, Eastern Division, now the District Court of the United States for the Eastern District of Washington, Northern Division, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing, certifying and printing the foregoing transcript is the sum of \$906.55 , and that the same has been paid to me by A. G. Elston, Esquire, attorney for the defendant and appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Spokane, in said District, this 28th day of February, 1913.

(Signed) W. H. HARE,

(SEAL)

Clerk.